

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MAACO FRANCHISING, INC., :  
 :  
Plaintiff, : 09-cv-04548  
 :  
v. : Philadelphia, Pennsylvania  
 : March 18, 2010  
PIERRE PHILIPPE AUGUSTIN, : 11:55 a.m.  
et al., :  
 :  
Defendants. :

TRANSCRIPT OF HEARING  
BEFORE THE HONORABLE LOUIS H. POLLAK  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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1 (The following was heard in open court at  
2 11:55 a.m.)

3 THE COURT: Good morning.

4 MR. FOURNARIS: Good morning, Your Honor.

5 MR. BUKOWSKI: Good morning.

6 MS. AMARANTE: Good morning, Your Honor.

7 THE COURT: Sorry to hold you up. Please  
8 sit down. I think it's the defense's turn.

9 MR. BUKOWSKI: Yes, Your Honor. We call  
10 Philippe Augustin, Your Honor.

11 THE COURT: All right. Philippe Augustin.

12 MS. AMARANTE: Your Honor, may I be heard  
13 before the witness takes the stand, please?

14 THE COURT: Yes.

15 MS. AMARANTE: MAACO has moved to preclude  
16 Mr. Augustin's testimony in this matter. And that's all  
17 been briefed in the motion in limine to preclude  
18 evidence and for sanctions and regarding past instances  
19 of misrepresentations and verified pleadings as well as  
20 allegations of destruction of documents. And so that's  
21 all been briefed, and we continue to believe that Mr.  
22 Augustin's conduct has been egregious and warrants an  
23 order precluding him from testifying in his defense here  
24 today.

25 And to the extent THAT the Court denies that

1 request, I would respectfully ask Your Honor to advise  
2 Mr. Augustin of his obligations of truthfulness and  
3 candor before the Court so that we can avoid --

4 THE COURT: Which obligation? How did you  
5 define it?

6 MS. AMARANTE: Of truthfulness to the Court.

7 THE COURT: Well, you're really moving to  
8 preclude the defendant from testifying?

9 MS. AMARANTE: Well, that is something that  
10 we included as a remedy in our motion in limine and for  
11 sanctions. And we do believe that the circumstances  
12 outlined in those papers warrant that.

13 THE COURT: Do you think that would consist  
14 with the adversary process?

15 MS. AMARANTE: Well --

16 THE COURT: That's the kind of line of work  
17 we're in here, you know.

18 MS. AMARANTE: I understand, Your Honor.  
19 You know, MAACO's position is that it's not consistent  
20 with that --

21 THE COURT: Let me put it this way: Suppose  
22 I were to grant your motion. Do you think that would be  
23 a help to you or a hindrance?

24 Let me suggest that I am not the only  
25 court -- I'm not the only court in this courthouse.

1 Above me there's a Court of Appeals. How do you think  
2 the Court of Appeals would feel about a civil action --  
3 assuming you prevail in the trial court after having  
4 precluded the defendant from testifying. How do you  
5 think the Court of Appeals might view a trial proceeding  
6 in which the defendant had not been permitted to testify  
7 in his own behalf? Do you think the Court of Appeals  
8 would look kindly at that?

9 MS. AMARANTE: You raise a good point, Your  
10 Honor. And MAACO will withdraw the request for purposes  
11 of the preliminary injunction hearing.

12 But we do wish to note that the witness  
13 should not be allowed to speak on behalf of Palm Beach  
14 Auto for instance, which is --

15 THE COURT: That the witness what?

16 MS. AMARANTE: Should not be allowed to  
17 speak on behalf of Palm Beach Auto as an entity, which  
18 has not appeared and has been defaulted and thereby has  
19 admitted the allegations in the complaint. And he is  
20 also not an officer or director of that entity.

21 THE COURT: Well, I take it defense counsel  
22 will agree that Mr. Augustin cannot represent the  
23 company unless you are. Are you --

24 MR. BUKOWSKI: No. You're right, Your  
25 Honor. We are not representing Palm Beach Auto. And he

1 knows what he knows and whatever --

2 THE COURT: Yes.

3 MR. BUKOWSKI: -- I don't think he's  
4 speaking on behalf of Palm Beach Auto. I'm going to ask  
5 him questions representing him and his wife and Phil's  
6 Auto Body, you know, who I represent.

7 THE COURT: Right.

8 MR. BUKOWSKI: And to the extent the  
9 Court --

10 THE COURT: Well, I will -- perhaps I should  
11 make it clear.

12 Mr. Augustin, sir, you are represented by  
13 counsel representing yourself and Mrs. Augustin. But  
14 your attorney does not represent Phil's Auto Body.

15 MR. BUKOWSKI: We do represent Phil's Auto  
16 Body. It's Palm Beach Auto and Collision Center, Inc.,  
17 that we do not.

18 THE COURT: I'm sorry. Palm Beach cannot be  
19 represented by you, sir. To the extent that Palm Beach  
20 has any role in this, you can't speak for it.

21 Well, happily the plaintiff has withdrawn  
22 the motion to preclude Mr. Augustin from testifying, so  
23 you may call him to the witness stand.

24 MS. AMARANTE: Thank you, Your Honor.

25 MR. BUKOWSKI: Thank you, Judge.

1 THE COURT: Good morning, sir.

2 MR. AUGUSTIN: Good morning.

3 PHILIPPE AUGUSTIN, WITNESS, SWORN.

4 COURTROOM CLERK: You can have a seat.

5 Please just state your full name and spell your last  
6 name for the record.

7 THE WITNESS: My name is Philippe Augustin.  
8 Last name is A-U-G-U-S-T-I-N.

9 COURTROOM CLERK: Thank you.

10 DIRECT EXAMINATION

11 BY MR. BUKOWSKI:

12 Q. Good morning, Mr. Augustin.

13 A. Good morning, Counselor.

14 Q. Please tell the Court where you presently reside.

15 A. I reside in 2293 Seaford Drive in Wellington,  
16 Florida 33414.

17 Q. And are you married?

18 A. Yes.

19 Q. To whom?

20 A. To Virginia Augustin. She's in the back of the  
21 court.

22 Q. Okay. And do you have children?

23 A. I have a daughter, a beautiful daughter. She's  
24 in third year of college right now.

25 Q. Where does she go to school?

1       A.    She's going for Florida Atlantic University and  
2   she play tennis for the --

3               THE COURT:   I'm sorry.   What university?

4               THE WITNESS:   Florida Atlantic University.

5               THE COURT:   All right.   Okay.

6               THE WITNESS:   And she's a tennis player for  
7   the university.

8   BY MR. BUKOWSKI:

9       Q.    Okay.   Can you please tell us about your prior  
10   experience in the auto body and collision repair  
11   business prior to any relationship with MAACO?

12       A.    Well, I work for Boston Body Works for almost  
13   13 years.   In that capacity, I was the general manager  
14   of the auto body shop, so I know the industry very,  
15   very, very well.

16               I was a member of MASS Auto Body Association.   So  
17   in that capacity, we -- I was in charge, you know, order  
18   parts.   I was in charge of four or five technicians.   I  
19   do all the paperwork, so that's my background.

20       Q.    And you were living in the Boston area at the  
21   time?

22       A.    I was living in Randolph; that's south from  
23   Boston, Massachusetts.

24       Q.    Okay.   And when you said the MASS Auto Body, is  
25   that Massachusetts Auto Body Association?

1       A.   Yeah.  We create that, and because we have so  
2 much issue with the insurance, the insurance wants to  
3 control the industry, so we create MABA.

4       Q.   Okay.  And how long did you live in the Boston  
5 area?

6       A.   Well, I live in Boston area for 23 years moving  
7 from Montreal.

8       Q.   When did you move from Montreal?

9       A.   In 1981.

10      Q.   Okay.  Where were you born and raised?

11      A.   I was born in Haiti, Port-au-Prince, a place  
12 called Avenue Jour Bon.

13      Q.   Okay.  And what -- and when did you move to  
14 Montreal?

15      A.   I moved in Montreal in 1980.

16      Q.   Did you attend high school and college?

17      A.   Yes.

18      Q.   Where?

19      A.   I went to college in Boston, Newbury College.

20      Q.   And did you graduate?

21      A.   Yes, in business accounting.

22      Q.   Okay.  What year was that?

23      A.   In 1986.

24      Q.   Okay.  What was your employment after college?

25      A.   That's the job I have for Boston Body Works, and



1 I work there for 13 years.

2 Q. And what was your last position at Boston Body  
3 Works?

4 A. I was the general manager for Boston --

5 Q. Okay.

6 A. -- Body Works.

7 Q. Okay. And in that position, that's when you  
8 described what you were doing for running the business;  
9 is that right?

10 A. Yes.

11 Q. Okay. How did you first come to have a  
12 relationship with MAACO?

13 A. Well, when I left Boston Body Works, and I have  
14 an offer to work for the church, we're -- you know,  
15 we're in charge of 190 churches. And at that time, that  
16 was a very good job, but I want to be on my own and  
17 that's when I applied in 2000 with -- for MAACO to get a  
18 franchise.

19 Q. Okay. Let's step back a second. What was the  
20 opportunity for the church?

21 A. I -- I used to work as an accountant for the  
22 church in Boston.

23 Q. Okay.

24 A. So we were -- we have like 190 churches we were  
25 in charge of.

1 Q. Okay. But then sometime while you were doing  
2 that, you came -- the MAACO franchise opportunity came  
3 along?

4 A. Yes.

5 Q. Okay. And I think you said 2000?

6 A. I think it's 2000. And then when I go online and  
7 I was looking for franchise in that field, and that's  
8 when I applied for MAACO. And I had a conversation with  
9 MAACO. They asked me to send in \$10,000. You know, and  
10 then when I was ready to send the money, they asked me  
11 to drive from Boston to Philly, to King of Prussia. And  
12 when I drive, I only spend 10, 15 minutes. That was the  
13 end of it, and I drove back.

14 Q. And what was the purpose of that visit to King of  
15 Prussia?

16 A. I don't know because when I was in class, nobody  
17 drive to King of Prussia. Everybody mailed the checks.  
18 But I have to drive to meet the gentleman for 10,  
19 15 minutes.

20 Q. Okay. And what did you discuss at the meeting?

21 A. Well, I discuss at the meeting, he give me a tour  
22 of MAACO, and then he told me, you know, they're going  
23 to look for a place to me. And then I say, you know, I  
24 need a place in Boston because that's where my business  
25 was, since, you know, I've been living there for

1 22 years. And that's -- that's when he take me around.  
2 He said just welcome to MAACO. He told me thank you  
3 very much. He take the money, and that's it.

4 Q. And how much was it?

5 A. \$10,000 deposit.

6 Q. And did you get a MAACO franchise in Boston?

7 A. No. We try. Every time we get a place,  
8 something else happen and then I been looking like that  
9 for two years. We cannot get a place in Boston.

10 Q. Eventually was another franchise opportunity  
11 available?

12 A. There was one available and that was in Lake  
13 Park, Florida. When I was working -- the gentleman was  
14 working before Doug Engle call me. I forget his name.  
15 When he mention Florida, I said, "I'm not looking for  
16 Florida." I said, "I'm not moving to Florida."

17 And then a week later, he called me and said,  
18 "Philippe, this is a good opportunity for you and we  
19 will help you to move and start a business."

20 Q. And is that what you did?

21 A. That's what we did. We (indiscernible)  
22 equipment. I flew with me, my wife, and my daughter to  
23 stay there. We check the place out. And we went back,  
24 and before I decide to have my daughter and my mother to  
25 came back with me, and they say, "Well, you know, take a

1 chance." And I said we will.

2 Q. Okay.

3 MR. BUKOWSKI: May I approach, Your Honor?

4 THE COURT: Yes, indeed.

5 BY MR. BUKOWSKI:

6 Q. I've handed you what I believe -- none of the  
7 Plaintiff's Exhibits are marked, but they're on the  
8 witness stand. I think it's Plaintiff's Exhibit 2 is  
9 the franchise agreement. Is that Exhibit 2 that you  
10 have before you? Is that the franchise agreement that  
11 you and your wife signed with MAACO?

12 A. I believe so.

13 Q. And what's the date of that?

14 A. It said October 4, 2002.

15 Q. Does that sound about right?

16 A. Yes.

17 Q. Okay. And it was sometime in the year 2000 you  
18 believe that you gave a \$10,000 deposit?

19 A. Yes, definitely.

20 Q. Okay. At the time you became a MAACO franchisee  
21 in 2002, what was -- what did you have to pay MAACO?

22 A. I take -- I give MAACO about like \$47,000,  
23 something like that, yeah.

24 Q. In, you know, a check or cash?

25 A. Check.

1 Q. Okay.

2 A. Yes.

3 Q. And do you know what that amount represented?

4 A. Well, the amount is for -- for the franchise per  
5 se, and there was another amount they wanted me to sign  
6 while I was in class for the equipment and I never  
7 signed that because I want to make sure when I go to  
8 Florida everything was -- was there for me.

9 Q. And was it?

10 A. No.

11 Q. Where was it; do you know?

12 A. Well, this is a -- a bad experience when we moved  
13 to Florida because we supposed to open the place on  
14 November 4th. When we moved there and there was two  
15 other gentlemen from MAACO. There was no supply. There  
16 was no equipment. The only thing that was there for us  
17 was the springboards.

18 So everything was stalling because the previous  
19 owner left the place to the manager. Everything was  
20 gone.

21 Q. Was this an existing MAACO franchise?

22 A. Yes. That was an existing MAACO owned by Jonas  
23 August.

24 Q. Okay. And you ended up in that same facility?

25 A. Yes, sir.

1 Q. Okay. And what did you do for equipment?

2 A. Well, what I did for equipment at that time there  
3 was no frame machine because I -- I built all the  
4 equipment myself.

5 Q. Okay.

6 A. I get -- accomplish on everything I bought.

7 Q. What was the rent for? Let me back up.

8 What was the address of your MAACO franchise?

9 A. 804 Old Dixie Highway, Suite 4, Lake Park,  
10 Florida 33403.

11 Q. And did you pay rent?

12 A. Yes, and --

13 Q. What was the rent amount?

14 A. Well, when I came that morning, on Monday  
15 morning, I gave the landlord \$10,000. According to Bill  
16 Chafey (ph), I'm suppose to give him the first and last,  
17 so I give him a check for \$10,000. And that's how we  
18 started.

19 Q. Okay.

20 A. And that's the first time I met the landlord.

21 Q. And whose name did you mention?

22 A. Bill Chafey.

23 Q. And who is he?

24 A. Bill Chafey, he was in charge to selling me the  
25 business.

1 Q. Okay.

2 A. Yes.

3 Q. And was your rent \$5,000 a month?

4 A. No.

5 Q. What was it?

6 A. When I get the statement from the landlord, the  
7 rent was \$5,000 plus \$3,000; that was \$8,000. When I  
8 asked him about the \$3,000, they said it was operating  
9 expenses. So the amount was \$8,000 instead of \$5,000.

10 Q. And that was paid to the landlord?

11 A. Yes.

12 Q. Okay.

13 A. That was \$8,000.

14 Q. Okay. And had someone told you that the rent  
15 would be \$5,000?

16 A. Bill Chafey told me the rent was \$5,000.

17 Q. Okay. Did your rent ever go up during the period  
18 of time that you were operating the MAACO franchise?

19 A. Yes. It then go up \$11,000 and some change, I  
20 believe.

21 Q. That was -- the \$11,000 figure was the rent at  
22 the time MAACO terminated your franchise?

23 A. That's correct.

24 Q. Okay. Did you ever ask MAACO for assistance in  
25 helping to reduce the rent?

1       A.   Yes, I did.  I spoke to so many people, Bill  
2   Chafey, Doug Engle, Bill Bass.  I talked to Dianna  
3   Dieciedue, she's (indiscernible) department.  I spoke to  
4   Grace.  Grace wasn't in charge to help me.  I spoke to  
5   all of them to talk to Norman Thomas who was the owner,  
6   is still the owner of that building, and then nothing  
7   was never done for me, to help me out there.

8       Q.   Did you talk to the landlord directly about it?

9       A.   I did spoke to the landlord directly about it,  
10   and that's why I called MAACO to talk to them because  
11   like I said you, I never know the landlord.  I never  
12   negotiate the rent with the landlord when I was in  
13   Boston.

14      Q.   Okay.  While you were a MAACO franchisee, what do  
15   you contend MAACO did failing to live up to its  
16   contractual obligation?

17      A.   A lot of stuff.  And I can tell you the first  
18   thing.  First of all, when I moved there was no  
19   equipment.

20      Q.   Okay.

21      A.   So I spent two weeks without being able to do any  
22   business whatsoever.  The only time I had a chance with  
23   that, that's when they let Tony Martino send some paint  
24   supply for me and he never charged me anything.

25           There was no equipment over there.  When I



1 called -- and finally, I called three months and one of  
2 the gentlemen from MAACO asked me to come. He say he  
3 never see anything like that.

4 Q. And who is Tony Martino?

5 A. I think -- he said, "Boy, boy."

6 Q. Who's Tony Martino?

7 A. Tony Martino was the founder of MAACO.

8 Q. And he is now deceased?

9 A. Exactly.

10 Q. Okay. Now, let's fast forward to the 2008-2009  
11 timeframe.

12 A. Okay.

13 THE COURT: Before we do that --

14 MR. BUKOWSKI: Sure.

15 THE COURT: Would you just find out a word  
16 from the witness as to what kind of equipment it was  
17 that wasn't there?

18 MR. BUKOWSKI: Yes, Your Honor.

19 BY MR. BUKOWSKI:

20 Q. Can you please tell the Court what equipment you  
21 need to run a MAACO franchise and what was and wasn't  
22 there when you arrived?

23 A. In order for you to the run any body shop, the  
24 first equipment you need, you need a frame machine.

25 Q. A what?

1 A. A frame.

2 Q. A frame machine?

3 A. A frame machine. In order for you to set up and  
4 measure when there's an accident. You definitely need  
5 that.

6 There was another one but they stole all the  
7 chairs and the equipment from that, so that's cannot be  
8 used.

9 Q. Someone stole it?

10 A. Someone stole it.

11 Q. You're not saying MAACO stole it?

12 A. I'm not saying MAACO stole it.

13 Q. Okay.

14 A. But before I move.

15 The second thing we need, they didn't supply  
16 so --

17 Q. Such as?

18 A. Pad, material, paper; all those things were gone  
19 that was in there.

20 Q. Okay.

21 A. For me. The only thing that was there was the  
22 spray booth. It was there when I moved in.

23 Q. There was a spray booth?

24 A. There was a spray booth there.

25 Q. What about other equipment that was missing?

1 Anything else?

2 A. Most of them were gone.

3 Q. What was missing?

4 A. Well, like I say to you, the frame machine, they  
5 got another one, the chairs were gone. All the supply  
6 were gone. All of the paint were gone. The paper for  
7 you to paint the car, they all were gone.

8 Q. In 2008, 2009, in your view, did MAACO do  
9 anything that failed to live up to its contractual  
10 obligations to you as a franchisee?

11 A. Yes, indeed.

12 Q. What was that?

13 A. Well, first of all, when they -- Mr. Engle came,  
14 we talking about certification. And certification was  
15 the big thing at MAACO at that time. Not when we  
16 started. I think that started in 2004, 2005.

17 And Mr. Hyatt who was here yesterday worked for  
18 two previous MAACO before he works for me. And he  
19 helped those two previous MAACO get certification  
20 because he was the painter for them. When Mr. Hyatt  
21 worked for me, we talk to Doug. Doug came. He said,  
22 "Philippe, there's some adjustments you need to do. The  
23 thing you need to do, you have to buy the more expensive  
24 paper." I said, "That's fine." We will have that so we  
25 can be certified because when we're certified we can get

1 the fleet account because when we get the fleet account  
2 through MAACO, the check was directed to MAACO, not to  
3 us.

4 Q. Okay.

5 A. So MAACO -- MAACO auto body, they get that money.  
6 So because we're not to be able to certify, Doug came  
7 only one time. Every time we tried to call for  
8 certification, there was something else happening.  
9 Either the guy's not working, he lost his job, always  
10 something for us to get certified.

11 Q. Okay. Are you aware of any fleet accounts that  
12 you either lost or could not obtain because you lacked  
13 certification?

14 A. I can -- you never can count. I have a very good  
15 relationship with Enterprise. I know the general  
16 manager. We want to sign a contract with Enterprise.

17 Q. Is that the rental car company?

18 A. That's correct.

19 Q. Okay.

20 A. Okay. Because we don't have the certification,  
21 we don't have that contract.

22 Q. Okay.

23 A. So there's Federal Express. We got -- we can --  
24 I can go so many of them.

25 Q. Okay. That's fine. Let's change subjects here.

1           What other ways did MAACO fail to live up to its  
2 contractual obligations?

3           A.   When we move, we got this sign outside that's  
4 suppose to light up.

5           Q.   It's supposed to be lit up?

6           A.   The sign.   Exactly.

7           Q.   A sign with the MAACO name on it?

8           A.   That's correct, yeah.

9           Q.   Okay.

10          A.   At night people can see it.   That's never done  
11 for seven years.

12          Q.   And did you ask them to do it?

13          A.   I asked them so many times.

14          Q.   Did they say they would do it?

15          A.   They say they would do it, and they never did it.  
16 And guess what?   For the new guy, now the sign light up.

17          Q.   The sign is lit up now?

18          A.   Yes.

19          Q.   Okay.   And we talked about the rent already.

20          A.   Yeah.   We talking about the rent, I think, you  
21 know.   And, I think, like I said to you, I think the  
22 other guy got (indiscernible) MAACO leadership they got  
23 for him.   I don't know how much he's paying that now,  
24 but I was paying \$11,000 and they never do anything  
25 about it.

1 Q. Okay. You did receive a letter from MAACO giving  
2 you notice of default?

3 A. Yes, I did.

4 Q. That was in December of 2008?

5 A. Yes.

6 Q. What was the financial condition of your business  
7 at the time?

8 A. It was very bad.

9 Q. Why is that?

10 A. Well, we had the -- you know, a civil recession,  
11 I cannot get fleet account, and everything was just  
12 going down south. And we tried to ask them for help.  
13 We cannot get help from the landlord to, you know,  
14 reduce the rent. And we cannot get the fleet account.  
15 That was the business way down.

16 But I did answer that letter also.

17 Q. Yes. I was just going to ask you that.

18 MR. BUKOWSKI: May I approach again, Your  
19 Honor?

20 THE COURT: Surely.

21 (Pause in proceedings.)

22 BY MR. BUKOWSKI:

23 Q. The letter you sent, was that in -- also in  
24 December of 2008?

25 A. I believe, or January. Because I think it

1     probably December when I told him Happy New Year or  
2     start out with Good New Year together. Yes, I believe  
3     so.

4           Q. And you heard me reading from portions of that  
5     letter yesterday, right?

6           A. Yes, indeed.

7           Q. I just want to find it here because I have a copy  
8     but -- okay. And again, this one doesn't have an  
9     exhibit sticker on it, but I have it marked, I think it  
10    was -- I want to say 18, but I'm not certain.

11           I have -- Exhibit 18, Plaintiff's Exhibit 18 is a  
12    letter you to Ms. Dieciedue dated December 16th, 2008?

13           A. Yes. That was before 2009, yes.

14           Q. And this is the letter that you sent in response  
15    to her letter giving you notice of default?

16           A. Yes.

17           Q. And the part that you were just referring to was  
18    the last two paragraphs on the second page; is that  
19    right?

20           A. Okay.

21           Q. In the second to last paragraph, you talk about  
22    the failure to send out someone for certification; is  
23    that right?

24           A. That's correct.

25           Q. Okay. And then in the last paragraph it

1 says, "Please have the person with whom I need to  
2 negotiate payment arrangements contact me to work out a  
3 payment plan for monies owed." Is that right?

4 A. Yes.

5 Q. Did someone contact you to work out a payment  
6 plan?

7 A. No.

8 Q. The notice of default mentioned failure to  
9 provide weekly reports. Can you explain that to the  
10 Court?

11 A. Well, the weekly report was done, and there was  
12 one time we have some trouble for computers. And then  
13 when we talked to the IT guy, his name is John, he tried  
14 everything that's possible. Finally, he said,  
15 "Philippe, you got to invest in new computers." And  
16 then we finally invest in new computers, and after that  
17 MAACO got all these report.

18 Q. You do admit, I think in your response letter  
19 there, Exhibit 18, that you owe some money to MAACO?

20 A. Yes, indeed.

21 Q. And you --

22 A. Yeah, I won't deny that.

23 Q. And you wanted --

24 A. Yeah.

25 Q. -- to make payment --



1 A. Yes.

2 Q. -- but did you dispute some of the amount?

3 A. Yes. I did dispute that because when we did the  
4 audit, the accountants come from MAACO. And when I  
5 spoke to Dianna, I told her I had my accountant go  
6 through the same audit, and they refused that  
7 categorically.

8 Q. At some point, you got a second notice of  
9 default; is that right? A supplemental notice of  
10 default?

11 A. Yes.

12 Q. And what was your response to that?

13 A. Well, I spoke to Dianna again. But between that  
14 period we -- I sent some money for them, within that  
15 period of the default.

16 Q. Do you remember how much?

17 A. I don't remember how much. But they received  
18 money from that. When I received that, and that's when  
19 I told her, I said, "Look, in -- I know I'm in really  
20 bad situation, that in the process to sell the  
21 business."

22 Q. Yes. Tell us about that.

23 A. Yeah. And what I do -- and Bill Bass contact me.

24 Q. And who is Bill Bass?

25 A. Bill Bass was the director of operation for

1 MAACO. He was in Puerto Rico at that time. He  
2 said, "Philippe, when I come back, I'll be in Philly."  
3 And he said, "And I will call you because I want to  
4 resolve that."

5 Q. Okay.

6 A. His words to me, he said, "Philippe, I use to run  
7 my own business. I want to make sure. You spent about  
8 nine years, two years waiting to get a MAACO and seven  
9 years with MAACO. I want to make sure you sell that  
10 business." At that time, he call me, he give me a  
11 telephone number.

12 Q. Okay.

13 A. The telephone number he gave me, he said, "Call  
14 David Stefan. He's interested about your business."  
15 When I called David Stefan, he did came and talk to me.

16 But the thing MAACO never know, I hired a brokers  
17 to sell the business also. Where I give you all my  
18 financial statements. And the workers was dedicated to  
19 two people to sell the business for -- between \$200,000  
20 and \$250,000.

21 Q. Were your ever -- did you ever sell your  
22 business?

23 A. No, because I don't have the time to sell it. By  
24 the time we were in process to work with David Stefan,  
25 working for the brokers, that's when MAACO shut the

1 telephone down.

2 Q. Okay. What, if anything, did Mr. Bass of MAACO  
3 tell you regarding the notices of default?

4 A. And what he said to me, he said I don't have to  
5 worry about that. As long we sell the business, he want  
6 to make sure I get some money. I pay my bills because I  
7 said to him, "I have my vendors I owe. I got customers  
8 give me money. I cannot just walk away from them like  
9 this." I said, "I got to make sure I pay my vendors and  
10 the suppliers I owe." He said, "That's fine." That's  
11 why he sent David Stefan, and I was negotiate with two  
12 other people to get the MAACO franchise.

13 Q. Were you surprised when you received the notice  
14 of termination?

15 A. That was in the -- the last time I spoke to  
16 Ms. Dieciedue, she called me. She said, "Philippe, you  
17 know we owe you some money. How we going to resolve  
18 that?" And I said to her, "I think we're getting  
19 close." I said, "I'm talking to David Stefan, and I got  
20 a couple people who want to buy the business." I said,  
21 "As soon as I sell the business, you will get all your  
22 money."

23 In less than two hours, they shut down the  
24 telephone.

25 Q. And what was the date of that?

1 A. The date of that was April 9, 2009.

2 Q. Okay. And --

3 A. That happens about 2 o'clock in the afternoon.

4 Q. Okay. And that's when you received the notice  
5 of -- well, what -- did you receive the notice of  
6 termination first or --

7 A. I think I received that before, but they never  
8 shut that down. She called me after the fact to say,  
9 "Are you making prepare to pay us?" I said, "Yes." I  
10 said, "I'm selling the business."

11 I said, "Bill Bass send me David Stefan to buy  
12 the business." I said, "I got two other peoples  
13 interested in the business." I said, "Give me time to  
14 sell the business, and everything will be okay." And  
15 then in less than two hours she just shut it down.

16 Q. And what do you mean she shut it down?

17 A. Well, MAACO is in charge of the telephone even  
18 when you're paying the telephone.

19 Q. Really?

20 A. Exactly. Even when you paying the telephone,  
21 MAACO is in charge of telephone. What happened, we  
22 tried to use the telephone and realized there was no  
23 communication. And I called, I think it was Bell South  
24 at the time before AT&T, I believe so, or AT&T bought  
25 Bell South, either or.

1           And when I call and the gentleman said, "Let me  
2   check on that for you." And then he said to me, "Sir,  
3   there something is wrong. There's somebody from King of  
4   Prussia shut down the telephone." And that's when I  
5   realized the situation.

6           Q. And then what did you do?

7           A. Well, when I get that shut down, the gentleman  
8   was on the telephone. I said, "Can you help me to get,  
9   you know, phone line." He said, "I'd be glad to." In  
10   ten minutes the phone went back on.

11           And then MAACO asked me to put the sign down. I  
12   put all the sign down. My business always Phil's Auto  
13   Body anyway in the first place. That's how I registered  
14   the business. I was doing to be a MAACO, and then I put  
15   Phil's Auto Body.

16           Q. So you took the MAACO sign down --

17           A. Yes.

18           Q. -- on April 9th, 2009?

19           A. No, not on April 9. I think April 10 or  
20   April 11. We called somebody to bring the sign down.

21           Q. Okay. And did you put another sign up?

22           A. No. That's very interesting. We try to put a  
23   sign, "Phil's Auto Body." In order for you to do that,  
24   you've got to go to the town of Lake Park.

25           Q. Okay.

1       A.   There's a sign, a big sign on the building, and  
2   then we just have to say Phil's Auto Body.   The  
3   inspector came, and I have a very good relationship with  
4   the town of Lake Park.   So they give me that sign.

5           For this second sign, the landlord need to sign  
6   for it, and then somehow they were talking with MAACO  
7   who have somebody else.   They never sign.

8       Q.   But you had one sign?

9       A.   Only one sign.   But I don't have the street sign.

10      Q.   But it says, "Phil's Auto Body"?

11      A.   Yes.

12      Q.   Not "MAACO"?

13      A.   Not MAACO.

14      Q.   Okay.   After April 9th, did you continue to do  
15   business as a MAACO franchisee?

16      A.   No.

17      Q.   What did you do?

18      A.   We -- we have Phil's Auto Body.   We continue our  
19   business as Phil's Auto Body.   We take care of  
20   customers.   We take care of vendor.   We take care of  
21   suppliers.

22           And then a lot of people, we called them because  
23   there is no way they can get in touch with us.   As a  
24   matter of fact, I remember April 10th what's so funny,  
25   we got so many people coming to the shops because they

1 keep -- they call. They cannot find what's going on  
2 with their cars.

3 Q. Did you have current customers on April 9th? You  
4 had people with cars in your shop?

5 A. Yeah.

6 Q. Okay. And did you continue to service them?

7 A. Yes.

8 Q. Okay.

9 THE COURT: We're going to have to recess --

10 MR. BUKOWSKI: Okay.

11 THE COURT: -- at this time. I'm sorry.

12 Well, we won't be able to -- I'm sure complete this  
13 after lunch, but I won't be able to meet with you until  
14 2:30. So I will see you then.

15 MR. BUKOWSKI: Okay.

16 THE COURT: You'll be back with us at 2:30,  
17 Mr. Augustin?

18 THE WITNESS: Yes, Your Honor.

19 MR. BUKOWSKI: Okay. And then we'll be  
20 brief and wrap up then this afternoon.

21 THE COURT: All right.

22 (Whereupon, a luncheon recess was taken at  
23 12:30 p.m.)

24 (Whereupon, the proceedings resumed at 2:34  
25 p.m.)

1 THE COURT: Good afternoon.

2 MR. BUKOWSKI: Good afternoon, Your Honor.

3 MS. AMARANTE: Good afternoon.

4 THE COURT: Please sit down.

5 (Pause in proceedings.)

6 THE COURT: Do you want to resume your  
7 direct examination?

8 MR. BUKOWSKI: Your Honor, while Mr.  
9 Augustin's taking the stand, I'm not sure what the  
10 Court's schedule is. I just wanted to alert the Court  
11 that the Augustins have a flight scheduled back to  
12 Florida tonight at 6:15, which we think -- my plan is to  
13 finish within 15 minutes and counsel has indicated they  
14 think they probably could finish in less than an hour.  
15 I don't know how much time the Court has this afternoon,  
16 but we're hoping to finish today.

17 THE COURT: Well, certainly nothing will  
18 interfere with your flight back at 6:15.

19 MR. BUKOWSKI: Okay.

20 THE WITNESS: Thank you, Your Honor.

21 DIRECT EXAMINATION CONTINUED

22 BY MR. BUKOWSKI:

23 Q. Mr. Augustin --

24 THE COURT: I hope we'll be through well  
25 before that; well before.



1                   MR. BUKOWSKI: That's my hope, too, Your  
2 Honor.

3 BY MR. BUKOWSKI:

4           Q. Mr. Augustin, before the lunch break, we were  
5 talking about your business after the April 9th, 2009,  
6 franchise termination date; do you recall that?

7           A. Yes.

8           Q. Okay. I believe we were talking about where I  
9 had asked you about whether or not you continued to do  
10 business using the MAACO name?

11          A. I did not.

12          Q. Okay. Did you contact customers who had their  
13 vehicles at your shop on the date of the termination of  
14 the franchise?

15          A. Yes, we did.

16          Q. How did you do that?

17          A. We did as a former MAACO. We are at Phil's Auto  
18 Body right now.

19          Q. Well, I mean, what -- how did you contact them?

20          A. Oh, because we got the telephone number.

21          Q. How?

22          A. By telephone.

23          Q. Okay. And what did you tell them?

24          A. Well, we tell them, you know, we're no longer  
25 involved with MAACO. MAACO, you know, stop everything

1 from us. So we still got their vehicle. They don't  
2 have to worry about anything, so we're going -- whatever  
3 we have to finish, and they were happy with that.

4 Q. Okay. And you did finish servicing those  
5 vehicles?

6 A. Yes.

7 Q. Okay. And then you mentioned Phil's Auto Body.  
8 What is that?

9 A. Phil's Auto Body, that's before I moved and went  
10 to Florida, my lawyer who was still Alan Zangen create  
11 that corporation, Phil's Auto Body, and that's what we  
12 using at that time.

13 Q. Okay. And so is that how you promoted your  
14 business? Well, let me be specific as to timeframe.

15 On April 10th, the day after the termination  
16 notice, under what name were you conducting business?

17 A. Phil's Auto Body.

18 Q. Okay. And where was your business located?

19 A. 804 Old Dixie Highway, Lake Park.

20 Q. The same location that you operated the MAACO  
21 franchise?

22 A. Yes, indeed.

23 Q. Okay. At some point, did you stop doing business  
24 under Phil's Auto Body?

25 A. Yes.

1 Q. Okay.

2 THE COURT: Before we go, can I interject a  
3 question?

4 MR. BUKOWSKI: Yes, Your Honor.

5 THE COURT: You say after April 9th you did  
6 business as Phil's Auto Body?

7 THE WITNESS: Yes, Your Honor.

8 THE COURT: But did you have a sign up  
9 saying, "Phil's Auto Body"?

10 THE WITNESS: Yes. We have two sign. We  
11 have one sign on the building that say, "Phil's Auto  
12 Body." We go to the town of Lake Park to put a new  
13 sign, "Phil's Auto Body," but the landlord have to sign  
14 the paperwork in order for us to have "Phil's Auto  
15 Body." And for some reason he have contact with MAACO  
16 and he never want to sign. So that's why we can't have  
17 the sign for "Phil's Auto Body." But we did have one  
18 big sign on the building say, "Phil's Auto Body."

19 THE COURT: I see. Okay.

20 BY MR. BUKOWSKI:

21 Q. And prior to the termination you had two -- did  
22 you have two signs?

23 A. Yes.

24 Q. And both of them said, "MAACO"?

25 A. Yes.

1 Q. Okay. And those signs came down after the  
2 termination?

3 A. That's correct.

4 Q. Okay. Very good. At some point, did MAACO ask  
5 you to take -- to leave the premises so they could take  
6 over and put a new franchisee there?

7 A. I believe they contact my lawyer, that was Alan  
8 Zangen.

9 Q. Okay.

10 A. They never contact me personally. I don't  
11 remember they -- nobody contact me after that.

12 Q. Okay. At some point you did vacate the premises?

13 A. Yes.

14 Q. When was that?

15 A. That was June 30.

16 Q. Okay. And from the period of time between  
17 April 9th and June 30th, were you conducting business at  
18 the 804 Dixie Highway location?

19 A. Yes.

20 Q. Under Phil's Auto Body?

21 A. Yes, indeed.

22 Q. Were you promoting that business at all using the  
23 name, "MAACO"?

24 A. The only time we used MAACO we say formerly  
25 MAACO.

1 Q. What do you mean by that?

2 A. Because he used to be MAACO on the application.  
3 We say "formerly MAACO." We use, "Phil's Auto Body."

4 Q. But who did you tell formerly MAACO?

5 A. We have an ad and on 102.3 FM, and we -- we did  
6 -- we did say that.

7 Q. Okay. And when did that ad run?

8 A. Just for, I think, 15 or 30 days.

9 Q. Okay. And why did you run that ad?

10 A. Well, we have a lot of people. We have a lot of  
11 contact. They -- they cannot get in touch with us. So  
12 we have to get the new telephone number to which other  
13 people.

14 Q. Why couldn't they get in touch with you?

15 A. Because MAACO shut down the telephone. The  
16 telephone we have that was (561) 845-2228 was shut down.  
17 This is the telephone everybody knows me for almost  
18 eight years.

19 Q. Okay.

20 THE COURT: Your sign that said, "Phil's  
21 Auto Body," did that also say, "formerly MAACO"?

22 THE WITNESS: No.

23 BY MR. BUKOWSKI:

24 Q. So what was your concern? That people wouldn't  
25 know how to get in touch with you?

1 A. Yes.

2 Q. Okay.

3 A. A lot of customers, they were very panicking  
4 because they cannot get in touch with us and we have  
5 their vehicles.

6 Q. And so are those the customers that you had  
7 previously said came down to the shop?

8 A. That's right. Because some of them made deposits  
9 on the car, like \$500, a \$1,000, and they tried to call  
10 the phone. The phone wasn't working.

11 Q. Okay. Now, at some point, did you stopped doing  
12 business as, "Phil's Auto Body"?

13 A. That's correct. On June 30, yes.

14 Q. Okay. What did you do after that?

15 A. What I did after that and -- me -- when the  
16 telephone shut down, I have a meeting with all my guys  
17 working and I explained to them the situation with  
18 MAACO. And then when we shut down, we find a place.  
19 That was Mr. Hyatt and (indiscernible) to find other  
20 place; that was 1009 Newman Road.

21 Q. And what is 1009 Newman Road?

22 A. 1009 Newman Road, that's a -- they have a place  
23 where we can get the license for the town of Lake Park  
24 that's allowed to open another business.

25 Q. Okay. And what was the name of that other

1 business?

2 A. Palm Beach Auto Painting and Collision Center.

3 Q. Okay. And is that the business that was formed  
4 and Mr. Hyatt signed the incorporation documents?

5 A. Yes.

6 Q. Okay. And when did Palm Beach Auto Painting  
7 start conducting business?

8 A. I believe in the first week of July.

9 Q. In the 1009 Newman Road?

10 A. Yeah. After July -- July 4th because that was a  
11 long weekend. Yeah, I believe so.

12 Q. Okay. And did you sign the lease? Or was a  
13 lease signed with the landlord there?

14 A. Yeah, Mr. Hyatt signed the lease.

15 Q. Okay. Why did Mr. Hyatt sign the lease?

16 A. Well, the concern -- they were worried about the  
17 people losing their job. That was the main concern  
18 because, you know, we were in the civil recession. And  
19 I think that's the reason he signed the lease, he want  
20 to take over and do the business over there.

21 Q. And did you continue to be involved in the  
22 business?

23 A. Somehow. But what I was doing most likely, I was  
24 selling cars because I got a friend of mine. That's  
25 where we start selling cars and to make money to support

1 my family.

2 Q. But were you also involved in the repair  
3 business?

4 A. I don't know how to do the job at all. I don't  
5 do mechanical. I don't know how to paint car. I don't  
6 know how to do body works at all.

7 The only thing involvement I have sometime when  
8 Mrs. Hyatt was there or is not there, I would estimate.  
9 That's the only thing.

10 Q. But were you the owner of the business?

11 A. Somehow because I invest in the business.

12 Q. Okay. And, in fact, we'll get into it, but you  
13 later sold your stock in the business?

14 A. Yes, indeed.

15 Q. Okay. Well, we'll come back to that later.

16 When you were -- when the business -- what was  
17 the business of Palm Beach Auto and Collision?

18 A. They were just like a -- we tried to make it a  
19 high class collision services. Because when we do that  
20 I have a friend of mine that work on high class car like  
21 Lamborghini, Ferrari, Mercedes-Benz, and he start  
22 bringing this car. That was the plan we have to have  
23 Palm Beach Auto Painting.

24 Q. Okay. We heard some testimony yesterday about  
25 the Polaris software that MAACO provided. Did Palm



1 Beach -- well, first, did Phil's Auto Body use the  
2 Polaris software?

3 A. I never used Polaris software myself. Before  
4 even we have MAACO, we used to have Audatex. That's  
5 another software.

6 Q. Can you spell that?

7 A. A-U-D-A-T-E-X. Just like to make sure that the  
8 same thing that the insurance company use because with  
9 Polaris, you cannot do anything with Polaris. That's  
10 something simply for MAACO.

11 Q. Okay. And if I understand you correctly, you  
12 used the Audatex even while you were a MAACO franchisee?

13 A. Yes, indeed.

14 Q. And then Phil's Auto Body continued to use it?

15 A. Yes.

16 Q. Audatex?

17 A. Audatex, yeah.

18 Q. Did it use Polaris?

19 A. I never used it myself. Maybe one of those  
20 people where I be use Polaris, but I never used Polaris  
21 after we closed that day, April 9th. I never used  
22 Polaris myself.

23 Q. Okay. Do you know whether other people in your  
24 company used Polaris after that date?

25 A. Maybe. I don't know. Because sometime you can

1 put Audatex to Polaris.

2 Q. Okay.

3 A. Yeah.

4 Q. Do you know whether your name was -- would show  
5 up if somebody used Polaris?

6 A. Yes, because my name was there by default.

7 Q. What do you mean by that?

8 A. Essentially, if somebody got an estimate, even  
9 I'm not there in the estimate, you would see, "Phil."

10 Q. Okay.

11 A. Automatically it's by default.

12 Q. Okay. Now, in -- going -- fast forward to  
13 July 2009, the Palm Beach Auto business, did that  
14 business use Polaris?

15 MS. AMARANTE: Objection.

16 THE WITNESS: No.

17 MS. AMARANTE: Objection. Your Honor, this  
18 witness -- we've covered this this morning that this  
19 witness cannot testify on behalf of what Palm Beach Auto  
20 did. That business has been defaulted. He's not an  
21 officer or director of the business. He can testify as  
22 to what he did, but it will not be testimony with  
23 respect to what Palm Beach Auto did.

24 THE COURT: I'll sustain the objection.

25 BY MR. BUKOWSKI:

1 Q. Did you ever use the Polaris software after  
2 July 2009?

3 A. No.

4 Q. Okay. Let's shift subjects briefly.

5 What involvement, if any, did your wife Virginie  
6 have in the business when it was a MAACO franchisee?

7 A. None whatsoever.

8 Q. Okay. What about with Phil's Auto Body?

9 A. None whatsoever.

10 Q. What about when you were doing business at 1009  
11 Newman Road?

12 A. None whatsoever.

13 Q. Okay. What about the use of the MAACO  
14 trademarks? There was some testimony -- and I guess I  
15 covered that somewhat in the use of the name. Did you  
16 use the MAACO trademark and the stylized name "MAACO" in  
17 any of your -- to promote your business after April 9th,  
18 2009?

19 A. No.

20 Q. What's that?

21 A. No.

22 Q. Okay. We also heard about the MAACO manuals.  
23 Did you use the MAACO manuals?

24 A. I never used a MAACO manual at all.

25 Q. Okay.

1 A. Never.

2 Q. Do you know what information is in those manuals?

3 A. I never read them because when I went to class, I  
4 never read anything in class because I got a good  
5 experience. Like I said to you, 13 years experience  
6 working in the most advance body shop in Boston. I  
7 never used that manual at all.

8 Q. Well, we heard testimony about the MAACO training  
9 yesterday. Can you describe that training? How long --  
10 first, how long was the training?

11 A. Yeah. I was there for three and a half weeks.

12 Q. Where was that?

13 A. That was in King of Prussia.

14 Q. At MAACO's headquarters?

15 A. At MAACO headquarters.

16 Q. Okay. And what did they teach you there?

17 A. Well, it was an embarrassment for me when I went  
18 there. It was almost four weeks. Lost four weeks, I  
19 can call it, the lost four weeks.

20 Q. Why do you say that?

21 A. Well, first of all, they -- first they teach you  
22 how to answering the telephone.

23 Q. What do you mean?

24 A. To say, "Good morning, MAACO. How can I help  
25 you?" That's what they teach you the first day.

1 Q. Okay.

2 A. On the telephone. After that, they drive you  
3 around going to New Jersey, visit new shops. They never  
4 teach you how to write an estimate.

5 At one point, I remember we went to a shop in New  
6 Jersey and there's a car pull it. It was -- I think  
7 it's very expensive car. And then the teacher asked  
8 four guys if we have to repair the front bumper, how  
9 much it will cost to repair that bumper. And then one  
10 of the guys said \$150; some say, you know, \$200. They  
11 were just like guessing. And I said to this guy, "Those  
12 are a tri-stage pin. How can you do it for 150?" And  
13 they say, "What is a tri-stage?"

14 Q. What are you saying? Tri-stage?

15 A. Tri-stage because you've got single stage, double  
16 stage, and tri-stage. And that's when the teacher tried  
17 to explain to him what is a tri-stage.

18 So they don't -- you know, the training is just  
19 like -- to me it was a waste of time.

20 Q. Did you learn anything in the MAACO training that  
21 you didn't already know?

22 A. No.

23 Q. Let's talk about other body shops and collision  
24 centers near your former franchise.

25 MR. BUKOWSKI: May I approach, Your Honor?

1 THE COURT: Yes, indeed.

2 BY MR. BUKOWSKI:

3 Q. Do you have Plaintiff's Exhibit 12 in front of  
4 you; is that right?

5 A. That's correct.

6 Q. What is that?

7 A. This is a map that it show the Old Dixie in West  
8 Palm Beach.

9 Q. Okay.

10 A. Location of (indiscernible) MAACO, Delray.

11 Q. Okay. Can you tell me what other body shop and  
12 collision centers, non-MAACO, other than the Newman  
13 Road, your business on Newman Road, what other non-MAACO  
14 businesses are in the area of your former MAACO  
15 franchise?

16 A. Probably five or six and without the fly by  
17 night.

18 Q. Well, can you name some of them?

19 A. Well, you've got Dave's Auto Body.

20 Q. Dave's Auto Body?

21 A. Dave's Auto Body. You've got Ed Morse. You got  
22 Jim Price. You got Mullinax Ford, A1A Auto Body. I  
23 mean, you got Diamond's Auto Body who's next to MAACO.

24 Q. And how far away from your former MAACO franchise  
25 are these businesses?

1       A.    You've got about three body shop or four in the  
2    same suite and same Old Dixie Highway. Four of them is  
3    in Old Dixie Highway. You got Mullinax Ford who is in  
4    Old Dixie Highway and Northlake. You got Jim Price.  
5    From Jim Price to MAACO, you can walk across the street.  
6    You go Diamond's to MAACO, you can just walk. Ed Morse  
7    you can just walk to MAACO.

8       Q.    Okay. Was there another MAACO franchisee of  
9    company owned MAACO location within ten miles of your  
10   former franchise?

11      A.    Oh yeah. You've got one on Church Street. You  
12   can look at that over here. That's not far.

13      Q.    Is it shown on the map?

14      A.    Yeah. You got -- I mean, I'm from Florida. I  
15   don't have to look at the maps to tell you where they  
16   are. As soon as you take I-95, you get off of  
17   Okeechobee Boulevard. You get west. Your first left,  
18   that's a MAACO franchise right there. And there's one  
19   in Military Trail, not far.

20      Q.    And those are within ten miles of your former  
21   franchise?

22      A.    Yeah, less than ten miles.

23      Q.    Okay. Did you have repeat customers at your body  
24   shop?

25      A.    Well --

1 MS. AMARANTE: Objection. Can we clarify  
2 which body shop?

3 BY MR. BUKOWSKI:

4 Q. Well, you know, when you were a MAACO franchisee.

5 A. Somehow. The collision service is not like you  
6 do an oil change. The customer got to come in every  
7 3,000 miles. You got repeat customer when they are in  
8 an accident. You know, yes, we do, but sometimes two  
9 years, three years. If they need you. That's why you  
10 always have to look to get new business. Because how  
11 many times somebody going to have a collision?

12 Q. Okay. Now, let's focus on -- do you have  
13 Plaintiff's Exhibit 10 in front of you? I think I --  
14 let me get --

15 (Pause in proceedings.)

16 THE WITNESS: Yeah.

17 BY MR. BUKOWSKI:

18 Q. All right. Plaintiff's Exhibit 10, there was  
19 some testimony about that yesterday. Can you look at  
20 the -- well, first of all, the first page looks like it  
21 has the name of Jerome Dear on it.

22 A. Yes.

23 Q. And he's shown as the general manager of Palm  
24 Beach Auto Painting and Collision, Inc.?

25 A. Yes.



1 Q. Do you know Mr. Dear?

2 A. Very well. He works for me. I was -- I was in  
3 at MAACO for, I believe, two or three years, yeah.

4 Q. He worked for you at MAACO?

5 A. Yeah. He used to work for me right there.

6 Q. At some point, did he cease working for you at  
7 MAACO?

8 A. Yeah. Him and Mr. Hyatt they always in  
9 collision.

10 Q. Who?

11 A. Him and Mr. Hyatt, yeah.

12 Q. Okay. Did Mr. Dear work for you at Phil's Auto  
13 Body after the --

14 A. Yes.

15 Q. -- franchise was terminated?

16 A. Yes.

17 Q. And did Mr. Dear work for Palm Beach Auto?

18 A. He worked for Palm Beach Auto. He quit because  
19 Fayught (ph) let him go. They have an argument and then  
20 he came back again.

21 Q. Okay. On page 2 of Exhibit 10, that's the page  
22 in the bottom right hand corner. It says, "PA-001357."  
23 Do you see that?

24 A. Yes.

25 Q. Do you see the "MAACO" name up in the upper left

1 hand corner?

2 A. Yes.

3 Q. Can you explain why that's there?

4 A. Well, just --

5 MS. AMARANTE: I'm going to object to the  
6 line of the questioning to the extent that the witness  
7 hasn't testified that he actually was involved in the  
8 creation of this Palm Beach Auto document.

9 THE COURT: Well, why don't you find out if  
10 he has information about it about it.

11 BY MR. BUKOWSKI:

12 Q. Do you have any information about -- maybe you  
13 didn't have any involvement in this Palm Beach Auto  
14 document.

15 A. No.

16 Q. You didn't?

17 A. I don't know anything about it, no.

18 Q. Okay. If you turn to a couple pages back on the  
19 page marked, "PA-001360."

20 A. I have that.

21 Q. Do you see that? It says, "Shop, Phil's Auto  
22 Body, Inc."?

23 A. Yes.

24 MS. AMARANTE: I'm going to object again  
25 because the witness just testified he didn't have

1 anything to do with these documents. I'm not sure how  
2 he's reading off of them.

3 MR. BUKOWSKI: Well, I think he testified he  
4 didn't have anything to do with that page. I'm going to  
5 ask him what his involvement -- I'm going to find out  
6 what his involvement is, Your Honor.

7 THE COURT: Go ahead.

8 MR. BUKOWSKI: Okay.

9 BY MR. BUKOWSKI:

10 Q. You see the date on that page?

11 A. Yes.

12 Q. Now, what is that?

13 A. 07/02/09.

14 Q. Is that July 2nd, 2009?

15 A. Yes.

16 THE COURT: I'm sorry. Which page are you  
17 now looking at?

18 MR. BUKOWSKI: Page PA-001360.

19 THE COURT: Okay.

20 BY MR. BUKOWSKI:

21 Q. It says there, "Phil's Auto Body" under shop,  
22 right?

23 A. Yes.

24 Q. Okay. And that says, "Contact Jerome;" is that  
25 Mr. Dear?

1 A. Mr. Dear, yeah, that's him.

2 Q. Okay. And the owner of the vehicle's name is  
3 Marie?

4 A. Marie Louiconyure (ph).

5 Q. How do you pronounce that?

6 A. Louiconyure.

7 Q. Oh my goodness.

8 A. It's a French word. Let knew spell it over here.

9 Q. Okay.

10 A. It's like Louicongur (ph), but that's  
11 Louiconyure.

12 Q. Do you know Ms. Louiconyure?

13 A. I don't know her very, very, very well.

14 Q. Was she a customer of yours at the -- when you  
15 were at the MAACO?

16 A. She's a good customer. She's a very good friend  
17 of mine.

18 Q. Okay. That's all I have on that one. You can  
19 set that aside.

20 A. Okay.

21 Q. Can you go to Exhibit 9. It should be the one --  
22 right here.

23 A. Yeah.

24 Q. This appears to be, I don't know, a repair order  
25 or an invoice from a company called LKQ.

1 A. Yes.

2 Q. Are you familiar with a company named "LKQ"?

3 A. Yes, indeed.

4 Q. How do you know LKQ?

5 A. Well, LKQ is a company who sell used parts. So  
6 every body shop anywhere in the United States, they know  
7 about LKQ or Keystone.

8 Q. And did you -- when you were operating the MAACO  
9 franchise, did you purchase used parts from LKQ?

10 A. Yes, indeed.

11 Q. And was there a discount that MAACO franchisees  
12 got?

13 A. No. Not that I -- no. No.

14 Q. Okay. Did you --

15 A. I know that very well. There's no discount for  
16 MAACO from LKQ. Anybody who own a shop can buy parts  
17 from LKQ.

18 Q. Okay. When you were doing business as Phil's  
19 Auto Body, did you continue to buy parts from LKQ?

20 A. Yes.

21 Q. You see on Exhibit 9 it says, "Sold to" and  
22 "Shipped to" it says MAACO of Lake Park --

23 A. Yes, I see that.

24 Q. -- 1009 Newman Road. Did you ever do business at  
25 1009 Newman Road at -- under the name MAACO of Lake

1 Park?

2 A. No.

3 Q. Okay. You can set that aside.

4 Let's go to Exhibit 13. What is Exhibit 13?

5 A. This is a security agreement I have Mr. Frank  
6 Samson.

7 Q. Well, it's -- is that -- that's the first several  
8 pages are security agreement, right?

9 A. Yes, yes.

10 Q. And then attached to that on the fourth page back  
11 is a promissory note; is that right?

12 A. (No response .)

13 Q. At the top of the page it says, "Promissory  
14 note," the fourth page.

15 A. Yes.

16 Q. Okay. And the date of that is what?

17 A. March 10, 2010.

18 Q. And what's the amount of the note?

19 A. Seventy thousand.

20 Q. And the date on the security agreement is what?  
21 On the first page.

22 A. March 10, 2010.

23 Q. And then several more pages back from the  
24 promissory note appears to be a stock purchase  
25 agreement; do you see that?

1 A. Yes.

2 Q. And --

3 THE COURT: You're saying beyond the  
4 promissory note?

5 MR. BUKOWSKI: Yes. Yes, Your Honor. About  
6 three or four pages beyond that.

7 THE COURT: I got it.

8 MR. BUKOWSKI: Okay.

9 BY MR. BUKOWSKI:

10 Q. And then page 12 of that agreement --

11 A. Yes.

12 Q. -- under the name seller, it has your name,  
13 right?

14 A. Yes.

15 Q. Is that your signature?

16 A. Yes.

17 Q. And next to you it says "Buyer, Frank Samson."  
18 Is that Mr. Samson's signature?

19 A. Yes.

20 Q. And how do you know Mr. Samson?

21 A. Well, I met Mr. Samson through a friend of mine,  
22 and I knew him about a year ago. And then he used to  
23 come into the shop all the time.

24 He's a former teacher. He teach computer science  
25 and then he work with the RBMA, that's the Riviera Beach

1 Maritime Academy. And he works for Viking, and that's  
2 how I know him.

3 Q. Okay. And turning to the front of Exhibit 13,  
4 the third page from the front on the security agreement.  
5 On page 3, is that your signature above your typewritten  
6 name?

7 A. Yes.

8 Q. And is that Mr. Samson's signature as debtor?

9 A. Yes.

10 Q. Okay. And in the promissory note, the third page  
11 of that, is that Mr. Samson's signature?

12 A. What page?

13 Q. The third page of the promissory note.

14 A. Yes.

15 Q. Okay. And is this -- are these documents that  
16 you signed on or about March 10th, 2010?

17 A. Yes.

18 Q. Okay. What -- so did you agree to sell your  
19 stock in Palm Beach Auto?

20 A. Yes, indeed.

21 Q. And what was the price?

22 A. \$70,000.

23 Q. Wasn't the -- if you look at page 2 of the stock  
24 purchase agreement, paragraph 4, under "Purchase price."

25 A. Yes.



1 Q. What was the price?

2 A. \$75,000.

3 Q. Okay. And how was that to be paid?

4 A. Well, he gave me a deposit of \$5,000, and he have  
5 to pay me \$4,221 per month in 60 consecutive monthly  
6 payment.

7 Q. All right. And did you receive a payment of  
8 \$5,000 from Mr. Samson?

9 A. Yes.

10 Q. Let me hand you what's been marked as  
11 Defendants's Exhibit 3. Can you identify Defendants's  
12 Exhibit 3?

13 A. Yes.

14 Q. What is that?

15 A. That's the check Frank Samson gave me.

16 Q. Okay.

17 A. The check.

18 Q. For what?

19 A. The check is for \$5,000.

20 Q. And what was that --

21 A. Down payment of Palm Beach.

22 Q. And did you make a photocopy of the check?

23 A. Yes, that's it right here.

24 Q. Okay. After you agreed to sell your stock in  
25 Palm Beach Auto to Mr. Samson, what involvement, if any,

1 have you had in the Palm Beach Auto business?

2 A. The only thing I promise him, I would stay with  
3 him for 30 days to make sure everything, you know, work  
4 smoothly. And if he got all the, you know, topnotch  
5 people like Jerome knows the business very well.

6 Q. Jerome who?

7 A. Jerome Dear.

8 Q. Okay.

9 MR. BUKOWSKI: I have nothing further, Your  
10 Honor.

11 THE COURT: All right.

12 CROSS-EXAMINATION

13 BY MR. BUKOWSKI:

14 Q. Good afternoon, Mr. Augustin.

15 A. Good afternoon, Counsel.

16 Q. I'd like to start off by going through some of  
17 the ways that you indicated that MAACO had breached its  
18 agreement to you earlier in your testimony today. And  
19 the first one is moving expenses.

20 Do you remember testifying that someone at MAACO  
21 had promised to pay your moving expenses from Boston to  
22 Florida?

23 A. Yes, indeed.

24 Q. And you don't have anything in writing showing  
25 that that promise was ever made to you, do you, Mr.

1 Augustin?

2 A. No, I do not.

3 Q. And in any event, that promise would have been  
4 over seven years ago, correct?

5 A. It was more than seven years. I would say that,  
6 yeah.

7 Q. And so once you realized MAACO wasn't going to  
8 reimburse you your moving expenses, you continued to  
9 operate the franchise for another seven years in any  
10 event, correct?

11 A. Yes.

12 Q. Okay. Let's take a look at Plaintiff's Exhibit 2  
13 which is your franchise agreement.

14 A. Uh-uh.

15 Q. I'm going to ask you to turn to page 8.

16 A. (Witness complies.)

17 Q. Page 8, section 22.

18 A. Yes.

19 Q. Okay. And here this paragraph says, "Entire  
20 agreement. This agreement, the documents referred to  
21 herein and the attachment hereto, if any, constitute the  
22 entire, full, and complete agreement between MAACO and  
23 franchisee." Do you see that paragraph?

24 A. Yes.

25 Q. Okay. And where in the franchise agreement is

1     there any mention of MAACO paying your moving expenses  
2     from Boston?

3         A.   Well --

4         Q.   Is it in the franchise agreement, Mr. Augustin?

5         A.   Because what happened is, I was in Boston --

6         Q.   It's a yes or no question, Mr. Augustin.  Is it  
7     in the franchise agreement?

8         A.   I was in Boston.  That's why.

9         Q.   Does the franchise treatment contain anything  
10    about MAACO paying your moving expenses from Boston?

11        A.   It won't apply from --

12        Q.   Yes or no, Mr. Augustin.

13        A.   Not over here, but Bill Chafey --

14        Q.   It's not in the agreement, is it?

15        A.   Yeah, but Bill Chafey --

16        Q.   You're right.  It's not in the agreement, is it,  
17    Mr. Augustin?

18        A.   No.

19        Q.   Thank you.  You've answered my question.  Let's  
20    move on.

21        A.   Okay.

22                   MS. AMARANTE:  I'm now going to offer as  
23    Plaintiff's Exhibit 26 a document called, "Disclosure  
24    Acknowledgment Statement."

25                   THE WITNESS:  Thank you.

1 BY MS. AMARANTE:

2 Q. Mr. Augustin, is this your signature at the  
3 bottom?

4 A. Yes.

5 Q. Of this document?

6 A. Uh-uh.

7 Q. And your wife, Mrs. Virginie Augustin, signed it?

8 A. Yes.

9 Q. Dated August 16th, 2000, correct?

10 A. Yes.

11 Q. And do you see in paragraph 1 where it talks  
12 about your recognition and understanding that there are  
13 business risks --

14 A. Sure.

15 Q. -- involved in opening a MAACO?

16 And in paragraph 3 it says, "The franchisee  
17 agrees and states that the decision to enter into this  
18 business risk is in no manner predicated upon any oral  
19 representations, assurances, warranties, guarantees, or  
20 promises made by the company as to the likelihood,  
21 success of the franchise." Do you see that?

22 A. Yes.

23 Q. And there is space at the bottom that paragraph  
24 for you to indicate if any oral promises have been made  
25 to you. Do you see that? The blank -- the line where

1 the "None" is indicated?

2 A. Sure.

3 Q. Okay. And is that your handwriting that wrote  
4 "None" on that line?

5 A. And I'm not sure of that.

6 Q. Okay. But, in any event, you signed a document  
7 that indicated --

8 A. I did sign it.

9 Q. -- that no oral representations had been made to  
10 you?

11 A. Yes.

12 Q. Thank you.

13 Mr. Augustin, you also talked about the lack of  
14 equipment at the MAACO center in Lake Park when you took  
15 it over, correct?

16 A. That's correct.

17 Q. And you testified that you chose not to pay MAACO  
18 for the equipment, right?

19 A. I did not say that. I did choose not to pay  
20 MAACO for the equipment?

21 Q. Well --

22 A. What I state that I was -- I was in Boston, and  
23 when I move for the period, for the classes period, Bill  
24 Chafey want me to sign for the equipment. When I  
25 contact my lawyer in Florida, he said, "Philippe, I

1 don't want you to sign for equipment you don't have, you  
2 don't see." And that's when I did not sign for the  
3 equipment.

4 Q. You never paid MAACO for any equipment at that  
5 MAACO center, did you?

6 A. I did not. No. Let me take that back. That is  
7 a check for \$2,000. They got -- I sent a check for  
8 \$2,000 to the bank, not MAACO. But I sent a check to  
9 the bank.

10 Q. So --

11 A. The Bank of California.

12 Q. Okay. Did you pay MAACO for any equipment at the  
13 MAACO center?

14 A. I did not.

15 Q. Okay. And yet somehow you testified that it was  
16 a breach of the agreement for MAACO not to provide you  
17 with equipment that you hadn't paid for?

18 A. There was no equipment.

19 Q. And you didn't pay for any equipment --

20 A. My lawyer --

21 Q. -- right?

22 A. -- my lawyer -- like I state to you, my lawyer  
23 told me not to sign for it because here I'm coming from  
24 all the way to Boston, Massachusetts, and I moving to  
25 Florida in a new place. I don't know the place. The

1 place wasn't secure.

2 So when I came over here with my wife and my  
3 daughter to Florida, the place wasn't secure. I came to  
4 the business, there wasn't even no key for me at  
5 8 o'clock. There wasn't even a key for me to open the  
6 place. There was two MAACOs guys outside and myself.  
7 We can't even open the business. By the time we opened  
8 the business, everything was gone.

9 Q. Mr. Augustin, I understand that you have a plane  
10 to catch, so I'd ask if you could answer my questions  
11 and not give speeches because otherwise we're not going  
12 to get through this.

13 A. I will. I will.

14 Q. So you didn't pay MAACO for any equipment,  
15 correct?

16 A. I did say that. I did not pay MAACO.

17 MS. AMARANTE: I'm offering now -- and let  
18 me offer Plaintiff's Exhibit 26 as a full exhibit at  
19 this time absent objection.

20 MR. BUKOWSKI: No objection.

21 THE COURT: All right.

22 (Whereupon, Plaintiff's Exhibit No. 26 was  
23 admitted into evidence.)

24 MS. AMARANTE: And then I'm marking  
25 Plaintiff's Exhibit Number 27, which is an analysis of



1 investment.

2 (Whereupon, Plaintiff's Exhibit No. 27 was  
3 marked for identification.)

4 BY MS. AMARANTE:

5 Q. Mr. Augustin, on the last page of this document,  
6 that's your signature and your wife's signature; is it  
7 not?

8 A. Yes, indeed.

9 Q. Okay. And this is a document that MAACO gave you  
10 to indicate what you should expect to have to invest in  
11 your MAACO center, correct?

12 A. That's correct.

13 Q. Okay. And let's look at the second page of the  
14 document.

15 A. Uh-uh.

16 Q. It shows \$52,000 in the box that says, "Analysis  
17 of investment." Franchise agreement, the total payments  
18 to MAACO for the franchise agreement would be about  
19 \$52,000; is that correct?

20 A. Yes.

21 Q. And in addition to that, there's another \$127,000  
22 listed for equipment purchase; do you see that?

23 A. Sure.

24 Q. So that's in addition to the franchise fee that  
25 you would have paid to MAACO. You also knew that you

1 would be expected to pay approximately \$127,000 for  
2 equipment for your MAACO center, correct?

3 A. If the equipment with there, yes.

4 Q. And you never paid MAACO for any equipment, did  
5 you?

6 A. I did not.

7 Q. You also testified earlier today that MAACO  
8 failed to provide you with a new sign that had the  
9 lights working. Do you recall that testimony?

10 A. Yes.

11 Q. Again, if we look at the last page of what's been  
12 marked Plaintiff's Exhibit 27, the analysis of  
13 investment. Numbered paragraph 8 says, "Sign package,  
14 \$8,000." Do you see that?

15 A. I saw that.

16 Q. Yes. So this indicates that a package of new  
17 signs would generally run approximately \$8,000 and you  
18 knew that when you signed this document, correct?

19 A. That's correct. Can I say something --

20 Q. And you never --

21 A. -- to that?

22 Q. -- paid MAACO \$8,000 for the signs that you think  
23 you should have been given for free, did you?

24 A. No, it's not for free. I paid MAACO for new sign  
25 when they change the emblem. This document, MAACO

1 changed the emblem, and I paid for new sign because the  
2 old MAACO emblem was kaput. So we have no sign. So if  
3 this document for when they changed the sign, I paid for  
4 the new sign. I paid for the new equipment. I paid for  
5 all the thing inside the center.

6 So this document, that was an old MAACO. When  
7 they got the new MAACO, they change the sign, I paid for  
8 the sign. They change the sign. MAACO change all the  
9 time. This is 2000.

10 When we move on in that place, I paid for the  
11 sign because if you look at emblem MAACO, MAACO change  
12 three times since I -- I've been there. They got the  
13 old MAACO. They change the sign, I think in 2004, 2005,  
14 where I paid them and after that when Driven Brands took  
15 over, everything change again. I pay for that sign.

16 Q. Okay. So it's your testimony that you paid MAACO  
17 for a sign that they never sent you?

18 A. MAACO not only -- the sign to be lit up. That 's  
19 what we're talking about. I never talking -- the sign  
20 was there. There was a MAACO before that. I did  
21 mention that in my direct testimony. The sign was there  
22 before.

23 The only thing we discussed with MAACO all the  
24 time, every time I asked for something I don't get it.  
25 When I get something -- when Tony Martino, the founder

1 of MAACO was alive because he giving me cell phone, he  
2 give me everything, and after I spoke to Tony Martino,  
3 that's why Bill Chafey get fired and send then the  
4 attorney against me because that's why it is. It is  
5 what it is.

6 I paid for the new sign when the emblem changed.  
7 This is old document.

8 Q. Okay. Let me see if I can extract out any  
9 responsive pieces of that.

10 You paid for a sign and you received the sign?  
11 Is that what you just testified to?

12 A. There was a lot of sign we received because they  
13 want to change the --

14 Q. Okay.

15 A. -- emblem.

16 Q. So MAACO did provide you with a lot of signs?

17 A. I paid for it.

18 Q. And you paid for them?

19 A. I did pay for it, yeah. But the only thing I  
20 have issue with MAACO all the time and because my sign  
21 never lit up, when somebody driving at night, they  
22 cannot see it.

23 And I give you a good example, the new owner  
24 right now, he already got his sign lit up and I've been  
25 there for seven years. I've been fighting with MAACO

1 for that.

2 Q. Well, let's go back to Plaintiff's Exhibit 2,  
3 which is the franchise agreement. So me where in this  
4 written integrated document it says that it's MAACO's  
5 job to make sure that your sign lights up.

6 A. Well, Okay. All right.

7 Q. Go ahead. Look through the franchise agreement.  
8 Show me where that is.

9 A. Maybe it's not there. But let me tell you  
10 something why it's not fair. It's not sign for me, but  
11 there's sign for a new guy.

12 Q. Okay. So it's not in the franchise agreement, so  
13 let's move on.

14 A. It is not.

15 Q. Thank you.

16 A. It's not.

17 Q. Mr. Augustin, another one of your gripes with  
18 MAACO this morning was that they didn't help you reduce  
19 your rent with your landlord at the 804 Old Dixie  
20 Highway; is that correct?

21 A. Yes.

22 Q. Okay.

23 MS. AMARANTE: I am going to -- I'm going to  
24 offer Plaintiff's Exhibit 28 as a full exhibit absent  
25 objection.

1 MR. BUKOWSKI: What is it?

2 MS. AMARANTE: The analysis of investment.

3 MR. FOURNARIS: That's 27.

4 MR. BUKOWSKI: I thought that was 27.

5 MS. AMARANTE: I thought I said 27. I'm  
6 sorry. I'm offering Plaintiff's Exhibit 27 as a full  
7 exhibit.

8 MR. BUKOWSKI: I have no objection.

9 (Whereupon, Plaintiff's Exhibit No. 27 was  
10 admitted into evidence.)

11 MS. AMARANTE: And now I'm marking  
12 Plaintiff's Exhibit 28, which is a document  
13 entitled, "Assignment of Lease."

14 (Whereupon, Plaintiff's Exhibit No. 28 was  
15 marked for identification.)

16 BY MS. AMARANTE:

17 Q. Mr. Augustin, this is your signature on this  
18 document here on the assignment of lease?

19 A. Yes.

20 Q. And it's dated September 19, 2002, correct?

21 A. That's correct.

22 Q. And with this document, is it accurate to say  
23 that you're taking an assignment of the lease from the  
24 former franchisee Jonas Augusta (ph), correct?

25 A. I believe so.

1 Q. Yes. And MAACO is not a party to this lease, is  
2 it?

3 A. It wasn't a party to the lease, no.

4 Q. Correct. And if you'll look at the third  
5 paragraph on the first page, assignment of lease --

6 A. Uh-uh.

7 Q. -- it starts with, "Execution of this document."  
8 Do you see that?

9 A. What page are you?

10 Q. On the very first page of the document, third  
11 paragraph down.

12 A. Yes.

13 Q. It starts with, "Execution of this document."

14 A. Uh-uh.

15 Q. "With execution of this document, assignee,"  
16 that's you, Mr. Augustin, correct?

17 A. Uh-uh, yes.

18 Q. "Agrees to pay the lessor first month's rent plus  
19 sales tax," and in parenthesis it says that the first  
20 month's rent plus sales tax will be \$7,287.22, correct?

21 A. Sure.

22 Q. Okay. So you knew when you signed this that the  
23 rent was going to be \$7,287 at least for the first  
24 month, correct?

25 A. I don't know that, and let me tell you why I

1 don't know that. That was -- said \$7,000, but the  
2 original lease I have, it was \$5,000. The amount will  
3 make it \$7,000 was the operating expenses. Never  
4 explained that to me.

5 If you look at the statement from the landlord,  
6 they got a \$5,000 rent. That's what I thought I would  
7 pay. I never thought about the operating expenses to  
8 bring that to \$7,000.

9 Q. Right.

10 A. Yeah.

11 Q. Well, let's take a look.

12 A. Yes.

13 Q. On the bottom right hand corner there will be a  
14 page that says, "MFI 00156," and it's Exhibit B to the  
15 lease agreement that you took assignment of.

16 A. What page is that?

17 Q. It's MFI 00156 at the bottom.

18 A. Yes.

19 Q. So this is a rent schedule that shows the base  
20 rent for the location and it indicates that each year  
21 the base rent would increase, right, Mr. Augustin?

22 A. But if you look at the bottom, I did not sign  
23 that. That's Jonas August. That JA.

24 Q. Okay. This --

25 A. If you look at the bottom of it, this say JA.



1 That wasn't mine. It's-- my name is Philippe Augustin.

2 Q. I'm asking you if this document shows the rent  
3 schedule --

4 A. Yes, it did.

5 Q. -- and shows that the base rent will increase  
6 over time.

7 A. Yes.

8 Q. Okay.

9 A. Yes, that was there. I just want to point it out  
10 for you that wasn't me that initial it. That was the  
11 previous owner.

12 Q. Well, Mr. Augustin, when you took assignment of  
13 the lease, you took on Mr. Augusta's obligation under  
14 the existing lease, didn't you?

15 A. You know what, let me tell you what I was  
16 confused with all the MAACO thing.

17 Q. Didn't you?

18 A. Yeah, I'm just --

19 Q. Didn't you take on Mr. August's obligations under  
20 the existing lease agreement?

21 A. I will respond that to you, Counsel. Let me tell  
22 you what's confuse when we buy the business. We don't  
23 buy the business from Jonas. So we bought it from  
24 MAACO. So this is where all this confusion came up. We  
25 don't buy it directly from Jonas, the guy who left and

1     went on his way. We bought it from MAACO.

2             So that's a lot of documents while I was in  
3     Boston I don't have. That's why I'm trying to point it  
4     out, Counsel. The JA, that was Jonas August. We  
5     never -- I probably never have that information. That's  
6     why I tried to believe.

7             If you look at 00156, it's JA. That's not me  
8     sign that.

9     Q. So your testimony --

10    A. I'm not a member of that.

11    Q. So your testimony is that you took an assignment  
12    of a lease and signed this document on the first page on  
13    September 19th, 2002, without ever looking at the lease  
14    itself?

15    A. Well, I said to you I probably not look at that  
16    (indiscernible). I probably would not even have that  
17    page.

18    Q. Let's look at what's marked, "MFI 00137." The  
19    third paragraph on that page.

20    A. Yes, I get it.

21    Q. The third paragraph on that page references the  
22    minimum operating expenses and halfway in the paragraph  
23    it says, "Lessee's minimum operating expenses for the  
24    first year of the lease will be approximately \$1,440 per  
25    month." Do you see that?

1 A. What page are you? 00137?

2 Q. Yes, 00137, third paragraph --

3 A. Yes, I got that.

4 Q. -- talks about --

5 A. Yes.

6 Q. -- the minimum operating expenses --

7 A. Uh-uh.

8 Q. -- and midway through the paragraph says that the  
9 minimum operating expenses for the first year of the  
10 lease would be about \$1,440 a month.

11 A. Uh-uh.

12 Q. Do you see that?

13 A. Yes.

14 Q. And that's in addition to the base rent which was  
15 on the schedule that we were just looking at, correct?

16 A. Sure.

17 MS. AMARANTE: Absent objection, I'd look to  
18 move for Plaintiff's Exhibit 28 to be admitted as a full  
19 exhibit.

20 MR. BUKOWSKI: No objection.

21 THE COURT: All right. It will be admitted.  
22 (Whereupon, Plaintiff's Exhibit No. 28 was  
23 admitted into evidence.)

24 MS. AMARANTE: And I'm now going to mark  
25 Plaintiff's Exhibit 29 which is a lease amendment number

1 1.

2 (Whereupon, Plaintiff's Exhibit No. 29 was  
3 marked for identification.)

4 BY MS. AMARANTE:

5 Q. And if you'll turn with me, Mr. Augustin, to the  
6 third -- well, second page of this document. Is that  
7 your signature that appears?

8 A. Yes.

9 Q. Witnessed by Mr. Jerome Dear?

10 A. That's correct.

11 Q. And on the third page of the document, there's an  
12 Exhibit A, Revised Rent Schedule. And your signature  
13 appears there as well; doesn't it, Mr. Augustin?

14 A. Yes.

15 Q. So back to the first page, this lease amendment  
16 number one was signed by you on February 15th, 2007,  
17 correct?

18 A. That's correct.

19 Q. And you also signed the rent schedule indicating  
20 the base monthly rent for the premises and showing that  
21 it would increase each year, correct?

22 A. That's correct.

23 Q. On the rent schedule right under the rent  
24 indications it says, "The above numbers do not include  
25 operating expenses or sales tax," correct?

1 A. That's correct.

2 Q. And for the first year, the monthly base rent is  
3 \$6,680; do you see that?

4 A. Yes.

5 Q. Let's go back to the first page of the document.  
6 Paragraph number 2 on the first page, Mr. Augustin.

7 A. Uh-uh.

8 Q. "Lessee's minimum operating expenses through  
9 December 31st of the first option year, will be \$3,096  
10 per month." Do you see that?

11 A. Yes.

12 Q. And you signed this document as well, right?

13 A. Yes.

14 Q. Okay. So if we add the base rent of \$6,600 and  
15 the minimum operating expenses of \$3,000, right there  
16 we're at about \$10,000 a month for your rent, correct?

17 A. That's correct.

18 Q. In February of 2007, you agreed to that. You  
19 signed this document, right?

20 A. Yes.

21 Q. And MAACO was not a party to this lease amendment  
22 either, is it?

23 A. It was in the first one. Not this -- not this  
24 one.

25 Q. MAACO's not a party to this lease amendment,

1 right?

2 A. We're talking about the 2007?

3 Q. 2007.

4 A. No.

5 Q. Yet you blame MAACO for the fact that you had to  
6 pay the rent that you agreed in this document to pay,  
7 don't you?

8 A. I don't blame MAACO for that. I asked MAACO  
9 before even I signed the lease to talk to the landlord  
10 to decrease the rent and make it clear to them there's  
11 no way I can survive with \$11,000 rent. I don't blame  
12 MAACO for that. That's what I said.

13 Q. Okay. Well --

14 A. I don't blame MAACO for it.

15 Q. -- let's go back to Plaintiff's Exhibit 2 which  
16 is the franchise agreement.

17 A. Uh-uh.

18 Q. And I'll asking you to show you where in that  
19 agreement it says that it's MAACO's job to go to your  
20 landlord and try to reduce your rent.

21 A. There's none of that, but I explained that to you  
22 before.

23 Q. Okay. Thank you.

24 A. Because I was in Boston, there were doing all  
25 this work for me.

1 Q. Yes, I understand.

2 A. That's what I said.

3 Q. Let's turn to --

4 THE COURT: May I inquire how long you  
5 expect cross to go on?

6 MS. AMARANTE: Your Honor, I likely have  
7 another 30 to 40 minutes.

8 THE COURT: Okay.

9 MS. AMARANTE: And defense counsel went  
10 longer in his direct than he had predicted. So I  
11 apologize, but I would like to still have the full  
12 45 minutes that I had original predicted.

13 THE COURT: All right. Go ahead. I'm going  
14 to hold you pretty strictly to that.

15 MS. AMARANTE: Okay. So that would take  
16 us --

17 THE COURT: Forty minutes will take you  
18 to --

19 MS. AMARANTE: Forty minutes from now.  
20 Okay.

21 THE COURT: -- ten minutes past four.

22 MS. AMARANTE: Okay. Thank you.

23 BY MS. AMARANTE:

24 Q. Mr. Augustin, when the landlord wouldn't  
25 renegotiate the reason with you, you just stopped paying

1 him, didn't you?

2 A. No, I did not.

3 Q. Okay. Well, let's look at Plaintiff's Exhibit 8  
4 which is in the pile there.

5 A. Yeah.

6 Q. It's already been marked.

7 A. Yeah.

8 Q. And this document shows that the landlord sued  
9 you for unpaid rent, correct?

10 A. That's correct.

11 Q. Okay. And at the time of this judgment adding up  
12 the amounts in paragraphs 2 and 3, you owed  
13 approximately \$75,000 in back rent; is that fair?

14 A. \$75,000?

15 Q. Yes.

16 A. No. Not no \$75,000.

17 Q. Well, paragraph 2 talks about \$43,000 in  
18 accordance --

19 A. Uh-uh.

20 Q. -- with a stipulation, and then paragraph 3 talks  
21 about an additional \$33,000 for the \$11,000 in rent that  
22 you hadn't paid for April, May, and June of 2009,  
23 correct?

24 A. It wasn't \$75,000 because I got a judgment, and I  
25 think I have it over here. The amount was like \$28,000.



1 Q. Yes. Because the paragraph 4 says that  
2 defendants have paid the sum of \$45,000.

3 A. But it wasn't \$75,000.

4 Q. Okay. You paid forty-five and then the judgment  
5 on paragraph 6 is for twenty-five?

6 A. No. Because the rent was gone because I was in  
7 the building. That's why. But it wasn't \$75,000. He  
8 wasn't paying the full \$11,000 every month, but he was  
9 getting paid because when we went to the Court and the  
10 judge decide for me to stay in business and for him to  
11 get just -- keep paying \$5,000 or \$5,500 every two weeks  
12 and that's what we did.

13 Q. When MAACO sent you the notice of default in  
14 December of 2008, you admit that you owed MAACO some  
15 money at that time, don't you?

16 A. Yes, indeed.

17 Q. You just disputed the amount, right?

18 A. Yes.

19 Q. And when you asked for someone to call about  
20 payment plans, Dianna Dieciedue did call you to talk  
21 about how to pay down that debt, correct?

22 A. No. She did not call me to pay about the debt.  
23 I spoke to somebody else in the finance company to call  
24 me. Me and Dianna, we never on the same page.

25 Q. Dianna Dieciedue told you to start paying current

1 and then she would talk to you about a payment plan for  
2 the past due stuff, correct?

3 A. Somebody else told me that. Not Dianna, because  
4 no. No.

5 Q. And you didn't start paying current, did you?

6 A. I'm still paying MAACO at the time.

7 Q. Well --

8 A. Even before I left, MAACO got the check they  
9 cashed.

10 Q. Let's look at Plaintiff's Exhibit a 15 --

11 A. Uh-uh.

12 Q. -- which is the notice of default.

13 A. Sure.

14 Q. And this document indicates that --

15 A. Wait a moment. I don't have it yet. Do you have  
16 another copy, please?

17 Q. Exhibit 15 isn't there?

18 A. I'm looking for it.

19 UNIDENTIFIED SPEAKER: There you go.

20 THE WITNESS: Thank you.

21 BY MS. AMARANTE:

22 Q. So the notice of default indicates approximately  
23 \$59,000 due and owing on December 3rd, 2008, correct?

24 A. That's correct.

25 Q. Okay. And by the time you received the notice of

1 termination in April of 2009, the amount had almost  
2 doubled, correct?

3 A. Just about.

4 Q. And according to the notice of termination as  
5 well, you were still failing to submit weekly reports of  
6 gross receipts, correct?

7 A. That's correct.

8 Q. And the bad economy didn't prevent you from  
9 submitting weekly reports, did it?

10 A. No. Because the -- I just state that before I  
11 spoke to the IT, John, because the computer wasn't good,  
12 so I have to buy new computer. When I get the new  
13 computer, they got all -- all the reports.

14 Q. Yes. And you could have completed the weekly  
15 reports by hand, couldn't you have, Mr. Augustin?

16 A. No, you can't do it by hand.

17 Q. And where is there a document in writing showing  
18 that you responded to Ms. Dieciedue's notices of default  
19 by saying that your computer precluded you from  
20 submitting the weekly reports?

21 A. When I spoke to John about that. They know about  
22 it. MAACO knows about it.

23 Q. But is there a document in writing --

24 A. No.

25 Q. -- that shows that?

1 A. No.

2 Q. So you didn't stay current like MAACO told you to  
3 and you didn't submit weekly reports, and by April 2009  
4 by MAACO's report -- by MAACO's records, you owed almost  
5 \$100,000; is that correct?

6 A. I was disputing that. Part of it was the audit.  
7 And what I said in my statement earlier, MAACO sent  
8 their own accountant. When I went to get my accountant,  
9 MAACO refused to do that. That was the audit.

10 In the second part of the audit, there was a  
11 yellow form.

12 Q. Okay. But the amount, by the time of  
13 termination, had grown to almost \$100,000 by MAACO's  
14 records. I'm not asking you to agree with what their  
15 records show. I'm saying by MAACO's records you owed  
16 almost \$100,000 at the time of termination.

17 A. Yes, by their records, yes.

18 Q. And it was growing substantially since the first  
19 notice of default in December, correct?

20 A. Yeah, I would say so.

21 Q. Yes. Okay.

22 A. Uh-huh.

23 Q. So let's review. You weren't paying MAACO even  
24 though you acknowledged in your response to the notice  
25 of default that money was due, some money was due, and

1 you weren't paying your landlord. Isn't it true, Mr.  
2 Augustin, that you also weren't paying your employees at  
3 the time?

4 A. I always pay them.

5 Q. Okay. Who's Tony Griffin?

6 A. Tony Griffin, that was one of my former employee.

7 Q. And isn't it true that he's suing you for back  
8 wages saying that you failed to pay him?

9 A. That's not back wages he sue me.

10 Q. He's suing you to --

11 A. No, not for back wages. He sue me, he claim, for  
12 overtime; not back wages. All my employees always get  
13 paid. Even if I don't get paid, all my employees get  
14 paid.

15 He sue me for overtime where I -- I got all the  
16 document from ADP because I don't want do the payroll.  
17 ADP does the payroll.

18 THE COURT: Isn't overtime a form of wages?

19 THE WITNESS: Yeah. But he get paid for  
20 that. I sent all this information to my lawyer. He  
21 got -- get paid. Because he got fired by me, that's why  
22 he get upset. But he get paid. I get all the forms by  
23 ADP.

24 THE COURT: I'm just talking about I thought  
25 you were disagreeing with counsel --

1 THE WITNESS: Yeah. He got -- he got all  
2 the, you know, my ADP --

3 THE COURT: -- about being sued for wages.

4 THE WITNESS: -- he got over time. All my  
5 employees always get paid.

6 BY MS. AMARANTE:

7 Q. Okay. But it is true that --

8 A. All my employees.

9 Q. -- Tony Griffin is suing you --

10 A. Yes.

11 Q. -- for unpaid wages?

12 A. Yeah. He sued me, I think, for \$27,000 or  
13 something like that. He's talking about  
14 back 2003, 2004. At that time he's not even working for  
15 me because he left and came back.

16 All my employees always get paid. I don't get  
17 paid.

18 Q. Okay. And, Mr. Augustin, isn't it true that you  
19 didn't pay Mr. Hyatt for all of his wages that were due  
20 and owing when he quit Palm Beach Auto?

21 A. I did pay Mr. Hyatt. The only check I don't  
22 have -- I still have it in my document over here because  
23 he stole the computer. Mr. Hyatt stole the computer  
24 from the business.

25 Q. That computer belonged to Sherwin William, didn't

1 it, Mr. Augustin?

2 A. We got the computer back from Sherwin Williams.

3 MS. AMARANTE: I'm going to offer as  
4 Plaintiff's Exhibit 30 a copy of a complaint that was  
5 filed in September 2009 by Tony Griffin v. Phil's Auto  
6 Body.

7 THE WITNESS: Sure.

8 MR. BUKOWSKI: Objection; relevance, Your  
9 Honor.

10 THE COURT: Overruled.

11 BY MS. AMARANTE:

12 Q. So, Mr. Augustin, this is the lawsuit we were  
13 just discussing wherein Tony Griffin sued you for unpaid  
14 wages, correct?

15 A. Yes.

16 Q. Okay. And you testified that it was several  
17 years ago. So I just wanted to establish for the record  
18 that the complaint is actually dated September, 2009,  
19 correct?

20 A. Sure.

21 Q. You never had a purchase and sale agreement  
22 signed with David Stefan for your franchise, for you  
23 MAACO center, did you, Mr. Augustin?

24 A. No.

25 Q. And you never even agreed on a price with

1 Mr. Stefan, did you?

2 A. We talk about the price.

3 Q. And you asked \$350,000 for the sale of the MAACO  
4 center, correct?

5 A. That's correct.

6 Q. Okay. And did you ever lower that price?

7 A. No.

8 Q. Okay. So you wanted to sell a business that you  
9 bought from MAACO for about \$45,000 and you wanted to  
10 sell it to Mr. Stefan from \$350,000; is that accurate?

11 A. Yes.

12 Q. And you never provided Mr. Stefan with any  
13 financial documents to substantiate your \$350,000 asking  
14 price for the franchise, did you?

15 A. I did not because when Mr. -- when David Stefan  
16 came and talked to me about it, he said he had a  
17 conversation with MAACO. He have lunch with the  
18 President of MAACO, and then he said he's going to take  
19 the franchise and that's why.

20 MS. AMARANTE: I'm now going to offer what's  
21 been marked as Plaintiff's Exhibit 31, which is an  
22 e-mail from Mr. David Stefan to you, Mr. Augustin.

23 THE WITNESS: Uh-uh.

24 BY MS. AMARANTE:

25 Q. Mr. Augustin, Mr. Stefan sent you this e-mail on



1 Friday, April 17th, correct?

2 A. That's correct.

3 Q. And this is your e-mail address,

4 PAUGUS@earthlink.net, correct?

5 A. That's correct.

6 Q. So April 17th, 2009, MAACO had already terminated  
7 your franchise agreement by now, correct?

8 A. April 9th, yeah.

9 Q. So by April 17th, they'd already terminated your  
10 franchise agreement, correct?

11 A. I do believe so.

12 Q. Yes. And --

13 A. Yup.

14 Q. -- and Mr. Stefan writes, "Philippe, do you  
15 intend on getting things to me or should I just forget  
16 it," correct?

17 A. That -- yes, that's correct.

18 Q. And so Mr. Stefan is still looking for some  
19 financial documentation from you regarding your sale of  
20 the MAACO center, correct?

21 A. That's correct.

22 Q. And you still had not provided him with any  
23 documentation to justify your \$350,000 asking price, had  
24 you?

25 A. No.

1 Q. You testified earlier that Mr. Bill Bass told you  
2 not to worry about the notices of default since you were  
3 trying to sell the franchise, did you --

4 A. That's correct.

5 Q. Well, Mr. Bass didn't tell you that you'd have  
6 forever to try to sell the business, did he?

7 A. He's the one who sent me David Stefan to buy the  
8 business from me.

9 Q. Well, Mr. Bass didn't tell you that you could  
10 stop paying MAACO entirely, stop submitting your weekly  
11 reports, never give information to Mr. Stefan regarding  
12 the sale of the business, and continue free and clear  
13 just because you were claiming that you were trying to  
14 sell your MAACO center; did he tell you that?

15 A. No.

16 Q. Okay. And at the same time, Ms. Dieciedue  
17 repeatedly told you that the default notices were  
18 serious business and that you needed to cure, correct?

19 A. Yes, she did.

20 Q. Mr. Augustin, after your franchise agreement was  
21 terminated, you continued to operate at the same  
22 location until June 30th, 2009, correct?

23 A. That's correct.

24 Q. Okay. And you testified that the sign was  
25 changed to Phil's Auto Body, right?

1 A. That's correct.

2 Q. But you were still using the same equipment,  
3 weren't you, Mr. Augustin?

4 A. My equipment.

5 Q. You were still using the same computers, right?

6 A. That was my computer.

7 Q. And you were still -- had Polaris software loaded  
8 on those computers, correct?

9 A. I wasn't using them.

10 Q. Regardless, it was on the computers, right, Mr.  
11 Augustin?

12 A. Yes, yes.

13 Q. And you were advertising to customers that you  
14 were formerly MAACO, correct?

15 A. Yes, indeed.

16 Q. You even had a show on a Haitian radio station  
17 and you were advertising that you were formerly MAACO in  
18 the language of Creole to those Haitian listeners,  
19 correct?

20 A. I don't recall that.

21 Q. But you did testify about advertising on 102.3 FM  
22 that you were formerly MAACO, correct?

23 A. That's correct.

24 Q. Let's look at Plaintiff's Exhibit Number 2 which  
25 is the franchise agreement.

1 A. (Witness complies.)

2 Q. And I'm going to asking you to turn to page 6,  
3 section 15A. Let me know when you're there, sir.

4 A. I'm here.

5 Q. Okay. "Obligations upon termination or  
6 expiration. A. Franchisee shall immediately cease to  
7 operate the business franchised under this agreement and  
8 shall not thereafter directly or indirectly represent to  
9 the public or hold itself out as a present or former  
10 franchisee of MAACO." Do you see that?

11 A. Sure.

12 Q. And you agreed to this when you signed this  
13 franchise agreement on October 4th, 2002, right?

14 A. Yes.

15 Q. You didn't have to sign this franchise agreement,  
16 did you, Mr. Augustin?

17 A. No.

18 Q. You could have opened an independent auto body  
19 painting and repair shop, Phil's Auto Body, and you  
20 could have run your own business, right?

21 A. Sure.

22 Q. You could have opened a different franchise and  
23 another brand, correct?

24 A. Uh-uh.

25 Q. But you opened a MAACO and you agreed to the

1 terms of this agreement, didn't you?

2 A. Sure.

3 Q. I want to ask you to pull out Plaintiff's  
4 Exhibit 9 and 10 for me, please.

5 A. (Witness complies.)

6 Q. Okay. Together -- I'm just going to ask some  
7 general questions about 9 and 10 together. But did you  
8 know your counsel first produced these documents to  
9 MAACO last Monday, March 8th?

10 A. Those two documents?

11 Q. Yes.

12 A. I don't know.

13 Q. And did you know that these documents were  
14 contained in a mass production of over a thousand  
15 documents that MAACO received for the first time Monday,  
16 March 8th?

17 A. (No audible response.)

18 Q. And you do know that the preliminary injunction  
19 hearing in this case was originally scheduled for last  
20 Thursday, March 11th, right?

21 A. That's correct.

22 Q. Okay. So after months of discovery requests and  
23 demands from MAACO, you and your counsel finally  
24 produced more than a thousand documents from Palm Beach  
25 Auto approximately three days before the hearing, right?

1           A.    I believe so.

2           Q.    And the delay in producing these documents was an  
3   effort to conceal your business activities from MAACO  
4   and this Court, wasn't it?

5           A.    No.

6           Q.    Well, your only answer and brief in opposition to  
7   this preliminary injunction motion was an effort to  
8   conceal your activities from MAACO and this Court,  
9   wasn't it?

10          A.    No, I don't have nothing to conceal.

11          Q.    Okay.  Mr. Augustin, isn't it true that you asked  
12   Sheik Hyatt to be the director and officer of Palm Beach  
13   Auto precisely so that you could hide your involvement  
14   from MAACO and from this Court ultimately?

15          A.    Like I said earlier, that was Mr. Hyatt decision  
16   to move the equipment to a better shop because he always  
17   open -- want to open his own shop.

18          Q.    You asked him to incorporate Palm Beach Auto in  
19   his name as a straw man so that you could operate it and  
20   hide that activities from MAACO; isn't that right?

21          A.    I did not tell him that, to conceal anything from  
22   MAACO, no.

23          Q.    Plaintiff's Exhibit 32 is the original answer  
24   that you filed in this litigation, Mr. Augustin.  Your  
25   counsel filed.  I'll ask you to turn to page 24 of the

1 document.

2 That's your signature, right, Mr. Augustin?

3 A. That's correct.

4 Q. Okay. And in the verification, you verify that  
5 the factual statements set forth in the foregoing  
6 documents are true and correct to the best of my  
7 knowledge, and you are aware that any of the foregoing  
8 statements, if they are willfully false, you are subject  
9 to punishment; is that what that verification says?

10 A. Sure.

11 Q. Okay. And this document is dated November 12th,  
12 2009, correct?

13 A. Yes.

14 Q. Let's look at page 7, paragraph 40. This  
15 paragraph states, starting from the fourth sentence, "It  
16 is admitted that Mr. Augustin provided financial support  
17 to Palm Beach Auto. By way of further response, Palm  
18 Beach Auto is operated by Sheik A. Hyatt. On limited  
19 occasions when Palm Beach Auto's employees have been  
20 unavailable, Mr. Augustin has answered Palm Beach Auto's  
21 telephone and greeted its customers."

22 Did I read that accurately?

23 A. Sure.

24 Q. And that wasn't true on November 12th when you  
25 verified it to be true, was it, Mr. Augustin?

1 A. Was not -- say it again.

2 Q. That was not true. It's not true and it was not  
3 true on November 12th, 2009, was it?

4 A. I just state that before. I say I answered the  
5 telephone. I state that earlier. I say I write  
6 estimate. But I don't do -- have to do, you know, body  
7 works or anything. I said that earlier.

8 Q. Isn't it true that from the time that Palm Beach  
9 Auto opened you were the owner and the sole operator of  
10 that business?

11 A. I was because I invest in it, yes.

12 Q. Okay. So when it says Palm Beach Auto is  
13 operated by Sheik A. Hyatt --

14 A. Uh-uh.

15 Q. -- that's a lie, isn't it, Mr. Augustin?

16 A. Technically, he was the owner because I -- I just  
17 invest in the business.

18 Q. Mr. Augustin, the statement that Palm Beach Auto  
19 is operated --

20 A. Uh-uh.

21 Q. -- by Sheik A. Hyatt is a lie, isn't it?

22 A. I don't see why it is a lie, ma'am.

23 THE COURT: Well, would you say that it was  
24 true?

25 THE WITNESS: Well, I was the investor, Your



1 Honor.

2 THE COURT: Pardon?

3 THE WITNESS: I was the investor of the  
4 business, but he was the president of the business.

5 THE COURT: The question you were asked was  
6 whether Sheik Hyatt was the operator. Did he run the  
7 business?

8 THE WITNESS: He was running the business,  
9 but I was there occasionally. He was running the  
10 business, yes. Him and his wife was running the  
11 business.

12 BY MS. AMARANTE:

13 Q. So it's your testimony here today, Mr. Augustin,  
14 that you were not operating Palm Beach Auto?

15 A. I was there occasionally sell used car.

16 Q. Okay.

17 A. Mr. Hyatt and his wife, I was there because I was  
18 investing in the business. I wasn't operating.

19 Q. So it's your testimony here today that you were  
20 not running the day-to-day operations of Palm Beach  
21 Auto?

22 A. Not really. Was like I spent five, six hours  
23 over there.

24 Q. Mr. Augustin, please pull out Plaintiff's  
25 Exhibit 11, which is the joint answer that your counsel

1 filed on your behalf on February 24th, 2010.

2 A. (Witness complied.)

3 Q. I'm going to ask you to look at -- you'll see  
4 page numbers at the top right corner, page blank of 27.  
5 Please go to page 26 of 27.

6 A. 26?

7 Q. Page 26 of 27. And that's your signature --

8 A. Yes.

9 Q. -- on a verification --

10 A. Yes.

11 Q. -- that's similar to the one you signed for the  
12 first answer, right, Mr. Augustin?

13 A. Yes, uh-uh.

14 Q. Okay. Let's go to page 7 of the document, and  
15 I'm going to ask you to look at paragraph 41.

16 A. Uh-uh.

17 Q. I'll read the second sentence. "It is admitted  
18 only that following the termination of the franchise  
19 agreement by MAACO, Mr. Augustin opened a new collision,  
20 repair, and auto painting shop located at 1009 Newman  
21 Road, Lake Park, Florida." Do you see that?

22 A. Yes.

23 Q. And so you opened Palm Beach Auto after the  
24 termination of your franchise agreement, right?

25 A. You can say that, yes.

1           Q.    You said it in your answer.  Let's look at  
2 paragraph 42, second sentence:  "It is admitted only  
3 that Mr. Augustin owns and operates Palm Beach Auto, a  
4 Florida corporation."  Do you see that sentence?

5           A.    Sure.

6           Q.    And that was true, right?

7           A.    Sure.

8           Q.    But it was also true on November 12th, 2009,  
9 wasn't it, Mr. Augustin?

10          A.    November --

11          Q.    12th, 2009, when you verified your first answer  
12 that did not indicate that you owned and operated Palm  
13 Beach Auto.  It was true then, too, right?

14          A.    Yeah.  I should say, yes.  Yeah.

15          Q.    Let's look at the next page, paragraph 43 --

16          A.    Uh-uh.

17          Q.    -- second sentence:  "It is admitted only that  
18 Mr. Augustin has been involved with Palm Beach Auto  
19 since its opening and up to and including today."  Do  
20 you see that, Mr. Augustin?

21          A.    Including today.

22          Q.    Right.  Up to and including the day you filed  
23 this answer.

24          A.    Okay.  Yeah.

25          Q.    And so that's a true statement as well, right?

1 A. Yeah.

2 Q. But it wasn't in your first answer on  
3 November 12th, 2009, was it?

4 A. (No audible response.)

5 Q. Let's turn to page 12, paragraph 78, second  
6 sentence: "It is admitted only that without Mr.  
7 Augustin's participation and financial support, Palm  
8 Beach Auto would not be operating." Did I read that  
9 accurately?

10 A. Yeah. What you say, yeah. Uh-uh.

11 Q. And where in this February 24th, 2010, answer  
12 does it say that Sheik Hyatt is the operator of Palm  
13 Beach Auto?

14 A. It did not say that.

15 Q. It doesn't, right?

16 A. No.

17 Q. And he never was the operator of Palm Beach Auto,  
18 was he, Mr. Augustin?

19 A. He part of it, yes, because sometime I'm not  
20 there. Like I said to you, he was there with his wife.

21 Q. Mr. Augustin, you intentionally verified your  
22 first answer indicating that Mr. Hyatt was the owner and  
23 operator of Palm Beach Auto in order to conceal your  
24 business activities from MAACO and this Court, didn't  
25 you?

1 A. I wasn't concealing anything from MAACO.

2 Q. Okay. Well, and it wasn't until Mr. Hyatt called  
3 MAACO's counsel and revealed the true ownership and  
4 operation of Palm Beach Auto that you filed this amended  
5 answer and changed your story about who owned and  
6 operated the business, right?

7 A. Because when my counsel called me because I told  
8 him I was the investor of the business.

9 Q. Okay.

10 A. Yeah.

11 Q. But it was after Mr. Hyatt came forward that you  
12 suddenly took him out as the claimed owner and operator  
13 of Palm Beach Auto?

14 A. I don't -- I don't recall it's before or after.  
15 I don't recall that.

16 Q. Mr. Augustin, why should this Court believe  
17 anything you say?

18 A. Because I'm telling the truth.

19 Q. Now or then?

20 A. I always tell the truth.

21 Q. Okay.

22 A. I just -- something I don't recall. I always  
23 tell the truth.

24 Q. Mr. Augustin, after you established Palm Beach  
25 Auto, you instructed Inderia Bellino and Shereena Hyatt

1 to shred the business documents from your former MAACO  
2 center, didn't you?

3 A. Yes.

4 Q. You directed the shredding of those business  
5 documents because you didn't want MAACO to see the  
6 records of your MAACO center, right?

7 A. That's not the question because I still have the  
8 records. I have the records. As a matter of fact, I  
9 bring a lot of them over here. I still got a lot of --  
10 I still have the records. I some of the records over  
11 here I brought.

12 Q. Okay. Wait a second. MAACO has been asking  
13 through the course of this litigation from the  
14 production of business records from your former MAACO  
15 center, right?

16 A. Well, they ask me --

17 Q. Right?

18 A. Yes.

19 Q. And you have not produced a single business  
20 record from your former MAACO center, have you?

21 A. The reason they don't get that record, that want  
22 me to pay \$2,500 as to get that records and -- can I  
23 just finish, Counsel?

24 They want -- they want to charge \$2,500 to have  
25 the forms -- a computer scientist get that record. I

1 told him they're welcome to do so. I told them I don't  
2 have the money to pay because I know MAACO already have  
3 all those documents. I said they need it, they're  
4 welcome to get to the computer to get everything they  
5 want until now. They can get whatever they want.

6 Q. Mr. Augustin, for months in response to MAACO's  
7 demands for production you failed to produce those  
8 documents, correct?

9 A. Yes.

10 Q. And now you show up here and you're claiming that  
11 there's documents on your counsel's table that we  
12 haven't seen?

13 A. I have some documents over here. I didn't print  
14 all of them out, but MAACO already have those documents.

15 Q. But, nonetheless, you did orchestrate a mass  
16 shredding of documents after you'd opened Palm Beach  
17 Auto, correct?

18 A. This is since 2002 --

19 Q. And --

20 A. -- we move. We have documents. We're talking  
21 about since 2002. So by the time we came to the new  
22 location -- and I know I have the documents  
23 electronically.

24 Q. But --

25 A. So that's what I just said to them, we have those

1 documents.

2 Q. Mr. Augustin, you knew that litigation with MAACO  
3 was a possibility when you engaged in that mass  
4 destruction of documents, didn't you?

5 A. No, I don't know that because we move in July.  
6 After we close in June 30th, we move after -- July 4th  
7 weekend and that's when this start.

8 Q. And the destruction of documents occurred at the  
9 end of July and into the fall, correct?

10 A. I don't remember when, but we did that when we  
11 move. I don't remember the time.

12 Q. Mr. Augustin, you testified that you used to work  
13 as an accountant, correct?

14 A. That's correct.

15 Q. And you haven't produced in this case a single  
16 consolidated financial statement for either your former  
17 MAACO center or for Palm Beach Auto, right?

18 A. That's correct.

19 Q. And so do you remember yesterday when your  
20 counsel was cross examining Mr. Monaghan and he made  
21 some indication that MAACO could calculate its damages  
22 from your behavior here by simply multiplying Palm Beach  
23 Auto's revenues by nine percent and collecting those  
24 royalties. Do you remember that line of questioning?

25 A. I believe so, yeah.



1 Q. Okay. And you haven't produced any documents so  
2 far in this litigation that's been pending since October  
3 that would allow MAACO to do that calculation, have you?

4 A. From what -- from Palm Beach or from my former  
5 MAACO.

6 Q. From either, right? You haven't produced any  
7 financial statements or profit and loss statements from  
8 either your former MAACO center or Palm Beach Auto, have  
9 you?

10 A. MAACO have those information. They don't have it  
11 from Palm Beach Auto Painting, but they have it from the  
12 old MAACO. They have all this old information from  
13 MAACO.

14 Q. But you haven't produced any profit and loss  
15 statements or financial statements from Palm Beach Auto,  
16 have you?

17 A. No.

18 MS. AMARANTE: Your Honor, I am striving to  
19 be done by 4:10, so bear with me.

20 BY MS. AMARANTE:

21 Q. Mr. Augustin, please turn to Plaintiff's  
22 Exhibit 13, which is the security agreement with Frank  
23 Samson. Mr. Augustin, who prepared these documents?

24 A. Alan Zangen.

25 Q. He's your attorney in Florida?

1 A. Yes.

2 Q. He also prepared the documents that allowed Sheik  
3 Hyatt to become a straw man and owner on paper of Palm  
4 Beach Auto?

5 A. He did.

6 Q. And isn't it true that this document, where you  
7 purport to sell your shares of Palm Beach Auto to Frank  
8 Samson, is simply another sham just like Sheik Hyatt  
9 owning Palm Beach Auto?

10 A. No, it is not.

11 Q. Well, let's review. Frank Samson has no  
12 experience in the automobile industry, does he?

13 A. Well, a lot of MAACO owner have no experience to  
14 own a MAACO.

15 Q. That's a yes, isn't it, Mr. Augustin? He has no  
16 experience.

17 A. Yeah.

18 Q. And he's in his late 60's, right, Mr. Augustin?

19 A. Yeah.

20 Q. And isn't it true that you own a coffin business  
21 with Mr. Samson?

22 A. No.

23 Q. You have business dealings with Mr. Samson?

24 A. I don't have no coffin business. I got --

25 Q. Well --

1 A. We have a business working on it but not coffins.

2 Q. Okay. You have a business with Mr. Samson?

3 A. We don't have a business with Mr. Samson. We  
4 working on a business. We don't have a business.

5 Q. You're working in what business?

6 A. A container business to rebuild Haiti, yeah.

7 Q. These documents are signed on March 10, 2009,  
8 correct?

9 A. That's correct.

10 Q. And that's one day before the preliminary  
11 injunction hearing was originally scheduled for this  
12 case, right?

13 A. That's correct.

14 Q. And you showed up the day of the injunction  
15 hearing on March 11th and showed this to MAACO's counsel  
16 for the first time, correct?

17 A. That's correct.

18 THE COURT: Did you say March 10th, 2009?

19 MS. AMARANTE: I'm sorry, Your Honor. 2010.  
20 I'm a year off.

21 BY MS. AMARANTE:

22 Q. Yes. They were signed on March 9th, 2010, and  
23 the preliminary injunction hearing was scheduled for  
24 March 11th, 2010, right, Mr. Augustin?

25 A. Uh-uh.

1 Q. Isn't it true that you were talking to Mr. Samson  
2 about potentially buying your shares of Palm Beach Auto  
3 for many months before March 10th?

4 A. We were talking about that. He was interested.  
5 He's always in shop.

6 Q. Why did you wait until March 10th to actually  
7 sign these documents then?

8 A. Because he wasn't ready.

9 Q. Did Frank Samson have counsel when he was looking  
10 over and signing these documents?

11 A. I don't think he have counsel, but his daughter,  
12 I think she's a big lawyer in California.

13 Q. Okay. I want to point out, the stock purchase  
14 agreement which is the third document stapled together  
15 here --

16 A. Uh-uh.

17 Q. -- on page 14 -- I mean, I'm sorry. Page 10,  
18 paragraph 14.

19 A. Okay.

20 Q. Has a covenant not to compete, doesn't it?

21 A. Sure.

22 Q. Okay. And by selling your shares in Palm Beach  
23 Auto, you're agreeing not to engage in any business in  
24 the town of Lake Park, Florida, for a period of one year  
25 following the closing, correct?

1 A. That's correct.

2 Q. Okay. So that was a reasonable restriction in  
3 your mind when you signed this document, right?

4 A. I would say so.

5 Q. Okay. And then it also says, "In the event the  
6 promissory note described in paragraph 4B should go into  
7 default, than the covenant not to compete is not  
8 enforceable," correct?

9 A. That's correct.

10 Q. Turning back to the first page where it says,  
11 "Security agreement" --

12 A. Uh-uh.

13 Q. -- in this document you retain an interest in  
14 Palm Beach Auto, correct, until the promissory note is  
15 paid?

16 A. Like I said to -- much like that, yes.

17 Q. Yes.

18 A. Uh-uh.

19 Q. So you retain an interest, and upon Mr. Samson's  
20 default of any payment on the promissory note you get  
21 the business back, don't you?

22 A. Yes.

23 Q. And isn't it true under these documents that if  
24 he misses one payment on the promissory note, you get  
25 the business back, right?

1 A. Yes.

2 Q. So let's look at the promissory note on the first  
3 page, second paragraph.

4 First of all, let me ask: The down payment which  
5 we saw as Defendants's Exhibit 3, I think, the check --

6 A. Uh-uh.

7 Q. -- that was simply \$5,000 that Mr. Samson paid  
8 you, correct?

9 A. That's correct.

10 Q. Have you cashed the check?

11 A. Not yet.

12 Q. Do you intend to cash the check, Mr. Augustin?

13 A. Yes, I do.

14 Q. And what bank account will you put that money  
15 into?

16 A. Wachovia.

17 Q. On the promissory note, paragraph 2, the first  
18 installment on the promissory note is due on April 10th,  
19 2010, right?

20 A. Okay.

21 Q. Isn't that also the day after you are arguing  
22 that the covenant not to compete with MAACO expires?

23 A. Yeah, that should be expired April 9th.

24 Q. Right. That's not a coincidence, is it, Mr.  
25 Augustin?

1       A.   Well, my lawyer prepared that.

2       Q.   Yes.   Well, in fact, so if Mr. Samson fails to  
3   make the very first payment on this promissory note on  
4   April 10th, he's in default and you take the business  
5   back, right?

6       A.   Yes, but hopefully he will.

7       Q.   And since you're asking this Court to end any  
8   injunction granted here today on April 9th, then in your  
9   mind you'd be free and clear on April 10th to take the  
10   business back from Frank Samson and run Palm Beach Auto  
11   again when he defaults on that first payment on the  
12   promissory note, right?

13      A.   That will be one year.

14      Q.   Yes.   And in fact, Mr. Augustin, isn't that what  
15   you intended when you signed this straw transaction with  
16   Frank Samson?

17      A.   No.

18      Q.   It's exactly what you intended.   And you don't  
19   intend to cash the \$5,000 check either, do you, Mr.  
20   Augustin?

21      A.   I will cash it because I've been traveling, me  
22   and my wife.   You know, I was here last week.   I flew  
23   back and I came back over here again --

24      Q.   Okay.

25      A.   -- because I don't know if I was coming this

1 week. Actually goes to this morning, so we set up a  
2 secured flight this afternoon. I've been traveling.  
3 That's the thing. I really don't have enough time.

4 Q. Mr. Augustin, you have a side deal with your  
5 friend and business partner, Mr. Samson, whereby he  
6 agreed to write you a check for \$5,000 and then default  
7 on the promissory note on April 10th and give you back  
8 your business free and clear.

9 A. No, I did not. No, that -- I don't have no --  
10 no.

11 Q. And conveniently, if that were the case, when  
12 Mr. Samson does default on the promissory note,  
13 conveniently, the covenant not to compete in your stock  
14 purchase agreement also becomes unenforceable, right?  
15 That's not a coincidence, is it, Mr. Augustin?

16 A. Like I said to the lawyer set up that for me.

17 MS. AMARANTE: I have no further --

18 THE COURT: What does that mean?

19 THE WITNESS: Well, the lawyer set up all  
20 those sale agreements for me and this is a true --

21 THE COURT: Without telling you what was in  
22 it?

23 THE WITNESS: What did you say, Your Honor?

24 THE COURT: The lawyer set up the agreement  
25 without telling you what it is? What is in it?



1 THE WITNESS: Well, we don't discuss that in  
2 detail, but I told him I'm going to sell the business  
3 because we can working and doing some kind of other  
4 business. Like I said earlier, to --

5 THE COURT: Was this just a detail?

6 THE WITNESS: Yes, Your Honor.

7 BY MS. AMARANTE:

8 Q. And, Mr. Augustin, the lawyer who prepared these  
9 papers for you is the same lawyer who prepared the  
10 documents for Sheik Hyatt to sign saying that he was the  
11 owner and operator of Palm Beach Auto, right?

12 A. Yes, indeed.

13 MS. AMARANTE: I have nothing further, Your  
14 Honor. And I think I made by deadline.

15 MR. FOURNARIS: Erika, you need to do some  
16 housekeeping on exhibits. I think 29 through 32 maybe.

17 MR. BUKOWSKI: Your Honor, we don't have any  
18 other witnesses. I have no further examination of Mr.  
19 Augustin.

20 And we move to admit -- I think we  
21 previously moved to admit Defendants's 1 and 2. We move  
22 to admit Defendants's Exhibit 3 and then rest.

23 THE COURT: I don't think there's any  
24 objection to Defendants's Exhibit 3.

25 (Whereupon, Defendants's Exhibit No. 3 was

1 admitted into evidence.)

2 MS. AMARANTE: There is not, Your Honor.

3 I have some housekeeping to do as well. I  
4 believe I failed to move to admit Plaintiff's Exhibits  
5 29 through --

6 MR. FOURNARIS: -- 32.

7 MS. AMARANTE: -- 32, and I'd like to do  
8 that now.

9 And actually from yesterday, Exhibits 15 and  
10 21 also need to be admitted. I don't believe there's an  
11 objection.

12 THE COURT: All right.

13 (Whereupon, Plaintiff's Exhibit Nos. 15, 21,  
14 and 29 through 32 were admitted into  
15 evidence.)

16 MR. FOURNARIS: No. And we already have an  
17 agreement on the exhibits as to the declaration of  
18 Mr. Hyatt.

19 MR. BUKOWSKI: Correct.

20 MR. FOURNARIS: That is --

21 MR. BUKOWSKI: 20, 20.

22 MS. AMARANTE: Right. The exhibits attached  
23 to Plaintiff's Exhibit 20, which was Mr. Hyatt's  
24 declaration, Exhibits A, C, and E would be full exhibits  
25 to this proceeding even though the declaration is not.

1 MR. BUKOWSKI: And we have no objection to  
2 that, Your Honor.

3 THE COURT: All right. Fine. They'll be  
4 admitted.

5 (Whereupon, Plaintiff's Exhibit Nos. 20-A,  
6 20-C, and 20-E were admitted into evidence.)

7 MS. AMARANTE: Thank you, Your Honor.

8 THE COURT: Very good. Well, thank you all.

9 Mr. Augustin, you can step down and I think  
10 you people can --

11 THE WITNESS: Thank you, Your Honor.

12 THE COURT: -- make your plane, and we are  
13 in recess.

14 MR. FOURNARIS: Thank you.

15 MS. AMARANTE: Thank you, Your Honor.

16 (Proceedings concluded at 4:11 p.m.)  
17  
18  
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21  
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23  
24  
25

## I N D E X

PLAINTIFF'S WITNESS      DIRECT      CROSS      REDIRECT      RECROSS

Philippe Augustin

By Mr. Bukowski      6

By Ms. Amarante      58

\* \* \*

E X H I B I T SPLAINTIFF'S EXHIBITS      MARKED      ADMITTED

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\* \* \*

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CERTIFICATION

I, Laura A. Jimenez, do hereby certify that  
the foregoing is a true and correct transcript from the  
electronic sound recordings of the proceedings in the  
above-captioned matter.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Laura A. Jimenez